



Journal of the Senate

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CALL TO ORDER

The Senate was called to order by President King at 10:17 a.m. A quorum present—38:

Mr. President	Diaz de la Portilla	Peaden
Alexander	Dockery	Posey
Argenziano	Fasano	Pruitt
Aronberg	Geller	Saunders
Atwater	Haridopolos	Sebesta
Bennett	Hill	Siplin
Bullard	Jones	Smith
Campbell	Klein	Villalobos
Carlton	Lawson	Wasserman Schultz
Clary	Lee	Webster
Constantine	Lynn	Wilson
Cowin	Margolis	Wise
Crist	Miller	

Excused: Senators Dawson and Garcia; Senator Pruitt, periodically for the purpose of working on the appropriations bills

PRAYER

The following prayer was offered by Senator Bullard:

God is my true friend and encourages me to be a friend to others. Almighty Father, we come before you this day with thanksgiving for all you have blessed each of us with, the breath of a new day, all of earth's beauty.

Thank you for granting me this opportunity to serve in this Legislature and to work with so many diverse people in my district and in this body. Thank you for the staff, who work so many hours to ensure the process works. Thank you for the leadership, who coaches this team and recognizes the uniqueness of each member of the team. Thank you for the families of each member and pray that each member of this body will return home safely to their families when the work we've been called to do is finished.

Let each member of this body continue to know his or her abilities and continue to match those abilities with their call. Let no harm befall any one of us. As we make final decisions about the budget today, let our decisions be with sound judgment and sensitive to the energy and work we have put forth during the Regular Session and Special Session.

We pray for peace in our homes, our cities, our state, our nation, and our world and I thank you for my family and the love they greet me with

at the close of each day and chapter in my life. We thank you for today and each day, in His name we pray. Amen.

PLEDGE

Senator Hill led the Senate in the pledge of allegiance to the flag of the United States of America.

By direction of the President, the Secretary read the following proclamation:

PROCLAMATION

State of Florida
Executive Office of the Governor
Tallahassee

TO THE HONORABLE MEMBERS OF THE FLORIDA SENATE AND THE FLORIDA HOUSE OF REPRESENTATIVES:

WHEREAS, the 2003 regular session of the Legislature of the State of Florida adjourned on May 2 without passing a General Appropriations Act for fiscal year 2003-2004; and

WHEREAS, I have called a Special Session commencing at 12:00 p.m. on Monday, May 12, 2003, and extending through 6:00 p.m. on Tuesday, May 27, 2003; and

WHEREAS, I have expanded the call of this Special Session to include legislation relating to workers' compensation; and

WHEREAS, it is prudent to further expand the call for this Special Session;

NOW, THEREFORE, I, Jeb Bush, Governor of the State of Florida, by virtue of the power and authority vested in me by Article III, Section 3(c)(1), Florida Constitution, do hereby proclaim as follows:

The call to the Legislature of the State of Florida is expanded for the sole purpose of considering the following:

HB 87-A or similar legislation introduced in the Senate, together with amendments to such legislation that would alter provisions in Chapter 373, Florida Statutes, relating to Everglades Restoration.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed to this Proclamation convening the Legislature in Special Session at the Capitol, this 19th day of May, 2003.

Jeb Bush
GOVERNOR

ATTEST:
Glenda E. Hood
SECRETARY OF STATE

MOTIONS

On motion by Senator Lee, by two-thirds vote **CS for SB 54-A** was placed on the Special Order Calendar.

On motion by Senator Lee, the provisions of Rule 7.1 relating to the amendment filing deadline for amendments to **SB 44-A**, **SB 50-A** and **CS for SB 54-A** were waived.

SPECIAL ORDER CALENDAR

CS for SB 32-A—A bill to be entitled An act relating to motor vehicle insurance costs; providing a short title; providing legislative findings and purpose; amending s. 119.105, F.S.; prohibiting disclosure of confidential police reports for purposes of commercial solicitation; amending s. 316.066, F.S.; requiring the filing of a sworn statement as a condition to accessing a crash report stating the report will not be used for commercial solicitation; providing a penalty; creating part XIII of ch. 400, F.S., entitled the Health Care Clinic Act; providing for definitions and exclusions; providing for the licensure, inspection, and regulation of health care clinics by the Agency for Health Care Administration; requiring licensure and background screening; providing for clinic inspections; providing rulemaking authority; providing licensure fees; providing fines and penalties for operating an unlicensed clinic; providing for clinic responsibilities with respect to personnel and operations; providing accreditation requirements; providing for injunctive proceedings and agency actions; providing administrative penalties; amending s. 456.0375, F.S.; excluding certain entities from clinic registration requirements; providing retroactive application; amending s. 456.072, F.S.; providing that making a claim with respect to personal injury protection which is upcoded or which is submitted for payment of services not rendered constitutes grounds for disciplinary action; amending s. 627.732, F.S.; providing definitions; amending s. 627.736, F.S.; providing that benefits are void if fraud is committed; providing for award of attorney's fees in actions to recover benefits; providing that consideration shall be given to certain factors regarding the reasonableness of charges; specifying claims or charges that an insurer is not required to pay; requiring the Department of Health, in consultation with medical boards, to identify certain diagnostic tests as non-compensable; specifying effective dates; deleting certain provisions governing arbitration; providing for compliance with billing procedures; requiring certain providers to require an insured to sign a disclosure form; prohibiting insurers from authorizing physicians to change opinion in reports; providing requirements for physicians with respect to maintaining such reports; expanding provisions providing for a demand letter; authorizing the Financial Services Commission to determine cost savings under personal injury protection benefits under specified conditions; amending s. 627.739, F.S.; allowing a person who elects a deductible or modified coverage to claim the amount deducted from a person legally responsible; specifying application of a deductible amount; amending s. 817.234, F.S.; providing that it is a material omission and insurance fraud for a physician or other provider to waive a deductible or copayment or not collect the total amount of a charge; increasing the penalties for certain acts of solicitation of accident victims; providing mandatory minimum penalties; prohibiting certain solicitation of accident victims; providing penalties; prohibiting a person from participating in an intentional motor vehicle accident for the purpose of making motor vehicle tort claims; providing penalties, including mandatory minimum penalties; amending s. 817.236, F.S.; increasing penalties for false and fraudulent motor vehicle insurance application; creating s. 817.2361, F.S.; prohibiting the creation or use of false or fraudulent motor vehicle insurance cards; providing penalties; amending s. 921.0022, F.S.; revising the offense severity ranking chart of the Criminal Punishment Code to reflect changes in penalties and the creation of additional offenses under the act; providing legislative intent with respect to the retroactive application of certain provisions; repealing s. 456.0375, F.S., relating to the regulation of clinics by the Department of Health; specifying the application of any increase in benefits approved by the Financial Services Commission; providing for application of other provisions of the act; requiring reports; providing an appropriation and authorizing additional positions; repealing ss. 627.730, 627.731, 627.732, 627.733, 627.734, 627.736, 627.737, 627.739, 627.7401, 627.7403, and 627.7405, F.S., relating to the Florida Motor Vehicle No-Fault Law, unless reenacted by the 2006 Regular Session, and specifying certain effect; authorizing insurers to include in policies a notice of termination relating to such repeal; providing for construction of the act in pari materia with laws enacted during the Regular Session of the Legislature; providing effective dates.

—was read the second time by title.

Senator Wise moved the following amendment which failed:

Amendment 1 (510296)—On page 36, lines 25-27, delete those lines and insert: *dispute, reimbursement levels in the community which are applicable to automobile insurance coverages, and other*

Senator Alexander moved the following amendment which was adopted:

Amendment 2 (675622)—On page 39, line 22, after “the,” insert: *Accreditation Association for Ambulatory Health Care, the*

Senator Bennett moved the following amendment which was adopted:

Amendment 3 (101982)—On page 53, line 27, after the period (.) insert: *The notice is not required if, after conducting an investigation, an insurer chooses to deny, reduce or down code a claim.*

Senator Alexander moved the following amendment which was adopted:

Amendment 4 (823754)—On page 58, line 5, after the period (.) insert: *With respect to a determination as to whether a physician or other provider has engaged in such general business practice, consideration shall be given to evidence of whether the physician or other provider made a good-faith attempt to collect such deductible or copayment.*

Senator Alexander moved the following amendment:

Amendment 5 (913570)—On page 76, line 4 through page 77, line 17, delete those lines and insert: *Subsections (1) and (2) of section 627.739, Florida Statutes, as amended by this act, shall apply to new and renewal policies issued on or after October 1, 2003.*

(2) *Subsection (11) of section 627.736, Florida Statutes, as amended by this act, shall apply to actions filed on and after August 1, 2003.*

(3) *Paragraph (7)(a) of section 627.736, Florida Statutes, as amended by this act, and paragraph (7)(c) of section 817.234, Florida Statutes, as amended by this act, shall apply to examinations conducted on and after October 1, 2003.*

(4) *Subsection (5) of section 627.736, Florida Statutes, as amended by this act, shall apply to treatment and services occurring on or after October 1, 2003.*

Section 17. *By December 31, 2004, the Department of Financial Services, the Department of Health, and the Agency for Health Care Administration each shall submit a report on the implementation of this act and recommendations, if any, to further improve the automobile insurance market, reduce automobile insurance costs, and reduce automobile insurance fraud and abuse to the President of the Senate and the Speaker of the House of Representatives. The report by the Department of Financial Services shall include a study of the medical and legal costs associated with personal injury protection insurance claims.*

Section 18. *Effective July 1, 2003, there is appropriated \$2.5 million from the Health Care Trust Fund, and 51 full-time equivalent positions are authorized, for the Agency for Health Care Administration to implement the provisions of this act.*

Section 19. (1) *Effective October 1, 2007, sections 627.730, 627.731, 627.732, 627.733, 627.734, 627.736, 627.737, 627.739, 627.7401, 627.7403, and 627.7405, Florida Statutes, constituting the Florida Motor Vehicle No-Fault Law, are repealed, unless reenacted by the Legislature during the 2006 Regular Session and such reenactment becomes law to take effect for policies issued or renewed on or after October 1, 2006.*

(2) *Insurers are authorized to provide, in all policies issued or renewed after October 1, 2006, that such policies may terminate on or after October 1, 2007, as provided in subsection (1).*

Section 20. *If any law that is amended by this act was also amended by a law enacted at the 2003 Regular Session of the Legislature, such laws shall be construed as if they had been enacted during the same session of the Legislature, and full effect should be given to each if that is possible.*

Section 21. *Except as otherwise expressly provided in this act, this act shall take effect October 1, 2003.*

MOTION

On motion by Senator Geller, the rules were waived to allow the following amendment to be considered:

Senator Geller moved the following amendment to **Amendment 5** which failed:

Amendment 5A (045124)—On page 1, line 22, delete *August 1, 2003* and insert: *October 1, 2003*

The question recurred on **Amendment 5** which was adopted.

RECONSIDERATION OF AMENDMENT

On motion by Senator Bennett, the Senate reconsidered the vote by which **Amendment 3 (101982)** was adopted. Further consideration of **Amendment 3** was deferred.

On motion by Senator Alexander, further consideration of **CS for SB 32-A** as amended was deferred.

SB 40-A—A bill to be entitled An act relating to the use of credit reports and credit scores by insurers; creating s. 626.9741, F.S.; specifying that the act's purpose is to regulate and limit the use of credit reports and credit scores by insurers for underwriting and rating purposes; specifying the types of insurance to which the act applies; defining terms; requiring that an insurer identify the items in a credit report which resulted in an adverse decision; prohibiting an insurer from making an adverse decision based solely on a credit report or score or certain other factors; requiring an insurer to provide a means for appeal to an applicant or insured under certain circumstances; prohibiting the use of a credit report or score unless the Office of Insurance Regulation determines, based on a filing by the insurer, that such use is valid and reasonable; authorizing the Office of Insurance Regulation to disapprove such filings; requiring an insurer to adhere to certain laws and rules; requiring an insurer to provide for an adjustment in the premium of an insured to reflect an improvement in credit history; authorizing the Financial Services Commission to adopt rules; providing for application; providing a contingent effective date.

—was read the second time by title.

Senator Miller moved the following amendment which was adopted:

Amendment 1 (245162)—On page 8, lines 3 and 4, delete “SB ____” and insert: SB 42-A

On motion by Senator Miller, by two-thirds vote **SB 40-A** as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—38

Mr. President	Diaz de la Portilla	Peadar
Alexander	Dockery	Posey
Argenziano	Fasano	Pruitt
Aronberg	Geller	Saunders
Atwater	Haridopolos	Sebesta
Bennett	Hill	Siplin
Bullard	Jones	Smith
Campbell	Klein	Villalobos
Carlton	Lawson	Wasserman Schultz
Clary	Lee	Webster
Constantine	Lynn	Wilson
Cowin	Margolis	Wise
Crist	Miller	

Nays—None

CS for SB 42-A—A bill to be entitled An act relating to a public-records exemption; creating s. 627.9742, F.S.; creating a public-records exemption for credit scoring methodologies and related data and information that are trade secrets filed with the Office of Insurance Regulation; providing for future legislative review and repeal; providing a statement of public necessity; providing a contingent effective date.

—was read the second time by title. On motion by Senator Miller, by two-thirds vote **CS for SB 42-A** was read the third time by title, passed by the required constitutional two-thirds vote of the members present and certified to the House. The vote on passage was:

Yeas—37

Mr. President	Dockery	Posey
Alexander	Fasano	Pruitt
Argenziano	Geller	Saunders
Aronberg	Haridopolos	Sebesta
Atwater	Hill	Siplin
Bennett	Jones	Smith
Bullard	Klein	Villalobos
Carlton	Lawson	Wasserman Schultz
Clary	Lee	Webster
Constantine	Lynn	Wilson
Cowin	Margolis	Wise
Crist	Miller	
Diaz de la Portilla	Peadar	

Nays—1

Campbell

On motion by Senator Smith—

SB 34-A—A bill to be entitled An act relating to the judicial system; amending s. 25.073, F.S.; revising a definition for purposes of retired justices or judges assigned to temporary duty; amending s. 25.383, F.S.; removing provisions relating to fees for certification and renewal of certification of court reporters; amending s. 25.384, F.S.; expanding the use of the Court Education Trust Fund; revising the title of pt. I, ch. 27, F.S.; renumbering and amending s. 43.35, F.S.; requiring witness coordination to be provided by the state attorneys and public defenders; amending s. 27.02, F.S.; restricting duties of state attorneys before circuit and county courts; requiring the state attorney to provide discovery materials to a defendant; providing for fees; amending s. 27.04, F.S.; revising provisions relating to summoning and examining witnesses for the state to cover any violation of the law; amending s. 27.15, F.S.; providing for payment of expenses for a state attorney to assist in another circuit; amending s. 27.25, F.S.; providing that state attorneys may employ personnel and receive appropriations as authorized by the General Appropriations Act; amending s. 27.34, F.S.; prohibiting counties or municipalities from funding the state attorneys' offices for prosecution of violations of special laws or ordinances; eliminating provisions authorizing the use of funds for certain civil and criminal proceedings; eliminating provisions requiring counties to provide certain services and pay certain fees, expenses, and costs incurred by the state attorney; amending s. 27.35, F.S.; providing that salaries of state attorneys shall be provided in the General Appropriations Act; revising the title of pt. III, ch. 27, F.S.; creating s. 27.40, F.S.; providing requirements for court-appointed counsel; providing for circuit registries of private attorneys; requiring annual fees; specifying inapplicability to court-appointed counsel in postconviction capital collateral cases; creating s. 27.42, F.S.; providing for the composition, staff, responsibilities, and funding of circuit Article V indigent services committees; requiring the preparation and distribution of a statewide comparative budget report relating to circuit Article V indigent services committees by the Justice Administrative Commission; providing for the appropriation of funds for attorney's fees and expenses in criminal conflict cases and in child dependency cases and other court-appointed counsel cases; amending s. 27.51, F.S.; revising duties of the public defender; specifying additional indigent persons for whom the public defender is required to secure representation; deleting provisions relating to limitations on representation by public defenders in direct appeals of death penalty cases; amending s. 27.52, F.S.; revising provisions relating to determination of indigence; requiring the clerk of the circuit court to make such determination; providing for payment of application fees; providing for deposit of recovered amounts into the General Revenue Fund; providing for a payment program; amending s. 27.53, F.S.; revising method of funding offices of public defender; specifying that special assistant public defenders are volunteer attorneys; amending s. 27.5301, F.S.; revising method of paying salaries of public defenders; creating s. 27.5303, F.S.; providing requirements for appointment of counsel in conflict of interest of public defender; providing criteria for determining whether a conflict of interest exists; prohibiting withdrawal based solely on lack of funding or excess workload; creating s. 27.5304, F.S.; providing for compensation of private court-appointed counsel; amending s. 27.54, F.S.; prohibiting counties or municipalities from funding the public defenders' offices for prosecution of violations of special laws or ordinances; eliminating provisions requiring counties to provide certain services and pay certain fees,

expenses, and costs incurred by the public defender; amending s. 27.562, F.S.; providing for disposition of funds collected for legal assistance; amending s. 27.58, F.S.; revising provisions relating to administration of public defender services; amending s. 27.702, F.S.; conforming terminology; amending s. 28.101, F.S.; authorizing an increase in the service charge for filing for dissolution of marriage; renumbering and amending s. 43.195, F.S.; authorizing a clerk to dispose of items of physical evidence in cases where no collateral attack is pending; creating s. 28.215, F.S.; providing for pro se assistance; amending s. 28.24, F.S.; prohibiting the clerk of the court from charging court officials for copies of public records; modifying the service charges for services rendered by the clerk of the court in recording documents and instruments and in performing certain other duties; eliminating the charges for court attendance by each clerk or deputy clerk, court minutes, making and reporting payrolls of jurors, issuing jury summons, and paying witnesses and making and reporting payrolls; amending s. 28.2401, F.S.; authorizing an increase in various service charges for probate matters; prohibiting county governing authorities from imposing additional charges; creating s. 28.2402, F.S.; imposing a fee on a county or municipality for filing a municipal code or ordinance violation in court; amending s. 28.241, F.S.; authorizing an increase in the fee for filing a civil action in circuit court; requiring that a portion of the fee be remitted to the Clerk of Court Operations Conference; providing a filing fee for reopening a civil action, suit, or proceeding; providing for a reduction in that fee for a petition to modify a final judgment of dissolution; authorizing increases in other filing fees; deleting provisions authorizing a county to assess amounts in excess of specified service charges; prohibiting additional fees, charges, or costs; amending s. 28.245, F.S.; requiring electronic transmittal of funds collected by the clerks of court to the Department of Revenue; creating s. 28.246, F.S.; providing requirements for payment of court-related fees, charges, and costs; providing for collection by private attorney or collection agent; creating s. 28.345, F.S.; exempting state attorneys and public defenders from all fees and charges of the clerks of the circuit courts; creating s. 28.35, F.S.; establishing the Clerk of Court Operations Conference; providing membership; providing duties of the conference, including recommending changes in court-related fines, fees, service charges, and cost schedules to the Legislature, establishing a process for review and approval of proposed budgets submitted by the clerks of the court, certification of budget insufficiencies, and publication of a schedule of maximum fines, fees, service charges, and costs that may be charged; providing for a clerk education program; requiring maintenance of a public depository to receive funds for operations; requiring an annual financial audit; creating s. 28.36, F.S.; providing budget review and approval procedures for the court-related functions of the clerks of the courts; creating s. 28.37, F.S.; providing for certain revenues collected by the clerks to be remitted to the state to pay certain costs of the state courts system; requiring the Department of Revenue to adopt rules; amending s. 29.001, F.S.; defining the elements of the state courts system; providing for using state revenue to pay certain costs associated with those elements; specifying expenses that counties must pay; amending s. 29.004, F.S.; revising and expanding the list of elements of the state courts system to be provided from state revenues appropriated by general law; amending s. 29.005, F.S.; revising and expanding the list of elements of state attorneys' offices to be provided from state revenues appropriated by general law; amending s. 29.006, F.S.; revising and expanding the list of elements of public defenders' offices to be provided from state revenues appropriated by general law; amending s. 29.007, F.S.; revising and expanding the list of elements of court-appointed counsel to be provided from state revenues appropriated by general law; amending s. 24, ch. 2000-237, Laws of Florida, to delay the effective date of s. 29.008, F.S.; amending s. 29.008, F.S., relating to county funding of court-related functions; redefining terms; providing standards that facilities and communications systems and services must meet to qualify for funding; requiring that the integrated computer system be made capable of electronically exchanging certain data using specified means at certain levels by a specific date; providing for defining local requirements and adopting a budget therefor; creating s. 29.0085, F.S.; modifying county revenue and expenditure reporting requirements; creating s. 29.014, F.S.; creating the Article V Indigent Services Advisory Board; providing for appointment of members and terms; providing for organization; providing duties; creating ss. 29.015 and 29.016, F.S.; establishing contingency funds for the Justice Administrative Commission and the judicial branch to alleviate deficits in due process services appropriation categories; providing requirements for utilization of the funds; amending s. 34.032, F.S.; providing for funding of arrest warrants for violation of county or municipal ordinances; amending s. 34.041, F.S.; providing for filing fees and costs in county courts; providing for disposition of funds collected; amending s. 34.13, F.S.; requiring administration

of oaths relating to violation of a municipal ordinance to be at municipal expense; amending s. 34.171, F.S.; requiring county funding of bailiff salaries; amending s. 34.181, F.S., relating to branch courts; providing a cross-reference; amending s. 34.191, F.S.; providing for collection and distribution of fines and forfeitures; amending s. 39.0134, F.S.; providing for compensation of appointed counsel in dependency proceedings; amending s. 39.4075, F.S.; requiring parties to contribute to the cost of dependency mediation; amending s. 39.815, F.S.; revising a cross-reference; creating s. 40.001, F.S.; providing authority and duties of the chief judge; amending s. 40.02, F.S., relating to selection of jury lists; providing for performance of and payment for such duties; amending s. 40.29, F.S.; revising provisions relating to duty of clerks of court to make estimates and requisitions for certain due process costs; amending s. 40.30, F.S.; requiring the estimate and requisition for payment of jurors and witnesses to be endorsed by the Justice Administrative Commission or designee; updating terminology; amending s. 43.16, F.S.; removing reference to Justice Administrative Commission as part of the judicial branch; expanding duties of the commission relating to court-appointed counsel; amending s. 43.26, F.S.; redesignating the presiding judge of the circuit as the chief judge of the circuit; providing additional powers of the chief judge; amending s. 44.108, F.S.; deleting provisions authorizing a county to levy service charges for court mediation and arbitration; assessing a filing fee on court proceedings; depositing fees in the Mediation and Arbitration Trust Fund; amending s. 49.10, F.S.; removing a cross-reference; amending s. 55.10, F.S.; authorizing an increase in the fee for serving a certificate of lien; amending s. 55.141, F.S.; conforming a cross-reference; amending s. 55.505, F.S.; authorizing an increase in the service charge for recording a foreign judgment; amending s. 57.081, F.S.; revising provisions relating to costs and services provided to indigent persons; amending s. 57.085, F.S.; revising provisions relating to waiver of prepayment of court costs and fees for indigent prisoners; amending s. 61.14, F.S.; authorizing an increase in certain fees assessed for delinquency of child support and alimony; amending s. 61.181, F.S.; continuing the fee imposed on certain payments of alimony and child support; amending s. 61.21, F.S.; providing for authorization of parenting course by the Department of Children and Family Services; amending s. 77.28, F.S.; conforming a cross-reference; amending s. 92.153, F.S.; providing maximum charges for documents produced pursuant to subpoenas or records request issued by the state attorney or the public defender; amending s. 92.231, F.S.; providing for payment of expert witness fees; renumbering and amending s. 914.09, F.S.; providing for compensation of witnesses summoned in two or more criminal cases; amending s. 125.69, F.S.; providing funding requirements with respect to prosecution of violations of county ordinances; amending s. 142.01, F.S.; providing for the clerk of the court to establish a fine and forfeiture fund in each county to be used to pay the costs of court-related functions; deleting provisions authorizing counties to receive funds to pay the cost of criminal prosecutions and transfer excess funds to the county general fund; amending s. 142.02, F.S.; limiting the use of county funds from a levy of a special tax to pay for the cost of criminal prosecutions; amending s. 142.03, F.S.; requiring that fines and forfeitures be used to pay the costs of court-related functions; amending s. 142.15, F.S.; requiring that fees collected by the sheriff be remitted to the clerk in the county where the crime was alleged to have been committed; amending s. 142.16, F.S.; requiring that fines and forfeitures be remitted to the clerk in the county in which the case was adjudicated; amending s. 145.022; prohibiting a county from appropriating a salary to the clerk of the court based on the fees collected; creating s. 162.30, F.S.; providing for civil actions to enforce county and municipal ordinances; amending ss. 197.532, 197.542, and 197.582, F.S.; conforming cross-references; amending s. 212.055, F.S.; revising the definition of "infrastructure" for purposes of the local government infrastructure surtax; amending s. 212.20, F.S.; revising the distribution of the proceeds from certain local-option taxes; amending s. 218.21, F.S.; revising the guaranteed entitlement of municipalities to certain state revenue sharing; amending s. 218.25, F.S.; allowing a county to assign, pledge, or set aside certain funds as a trust for payment on indebtedness; amending s. 218.35, F.S.; revising requirements for budget preparation by the clerk of the circuit court as county fee officer; amending s. 318.15, F.S.; authorizing an increase in various fees for persons failing to comply with civil penalties, attend driver improvement school, or appear at a hearing; amending s. 318.18, F.S.; authorizing an increase in various fees for penalties for noncriminal dispositions; creating additional charges and fees to be paid to the clerk of the court; authorizing an increase in the fee to dismiss citations; providing for disposition of funds collected; amending s. 318.21, F.S.; revising disposition of civil penalties collected by county courts; amending s. 318.325, F.S.; specifying jurisdiction and procedure for parking infractions; amending s. 322.245, F.S.; authorizing an increase in the delinquency

fee for persons charged with specified criminal offenses who fail to comply with the directives of the court; amending s. 327.73, F.S.; authorizing an increase in the charge for court costs for failure to comply with the court's requirements or failure to pay specified civil penalties; amending s. 382.023, F.S.; authorizing an increase in the fee for dissolution of marriage; revising the portion to be retained by the circuit court and the portion remitted to the state, to conform; amending ss. 392.55, 392.56, and 394.473, F.S.; conforming terminology; amending s. 395.3025, F.S.; conforming cross-references; amending s. 397.334, F.S.; making treatment-based drug court programs a county option and providing county funding requirements; amending s. 712.06, F.S.; conforming cross-references; amending s. 713.24, F.S.; authorizing an increase in the fee for certain services performed by the clerk of the court in transferring liens; amending s. 721.83, F.S.; requiring filing fees and service charges to be paid separately for each defendant in a consolidated foreclosure action; amending s. 741.30, F.S., relating to domestic violence; providing for certain notice to petitioners relating to indigence; amending s. 744.3135, F.S.; authorizing an increase in the fee paid to the clerk of the court for processing guardian files; amending s. 744.365, F.S.; authorizing an increase in the fee paid to the clerk of the court for an inventory filed by a guardian; deleting provisions requiring that the county pay the auditing fee when such fee is waived by the court; amending s. 744.3678, F.S.; authorizing an increase in the fees paid by the guardian to the clerk of the court for filing an annual financial return; prohibiting the clerk of the circuit court from billing the county for a waived fee; amending s. 775.083, F.S.; deleting provisions authorizing counties to impose and collect additional fines to be used to pay for local crime prevention programs; providing for the disposition of fines and costs; requiring funding of crime prevention programs in counties; amending s. 796.07, F.S.; conforming a reference; amending s. 914.11, F.S.; requiring the state to pay certain costs and expenses of indigent defendants presently unable to pay; amending s. 916.107, F.S.; providing for right to treatment of forensic clients presently unable to pay; amending s. 916.15, F.S., relating to involuntary commitment of defendant adjudicated not guilty by reason of insanity; providing for representation by the public defender if the defendant is indigent; amending s. 938.01, F.S., relating to Additional Court Cost Clearing Trust Fund; requiring payment of court costs; amending s. 938.03, F.S., relating to Crimes Compensation Trust Fund; requiring payment of additional court costs; amending s. 938.05, F.S.; directing court costs to be deposited in the clerk of the courts fine and forfeiture fund instead of the county trust fund; amending s. 938.06, F.S.; removing a restriction on local liability for payment of costs for crime stoppers programs; amending s. 938.19, F.S.; authorizing counties to fund teen courts; amending s. 938.27, F.S.; revising provisions relating to judgment for costs on conviction; requiring payment of such costs; amending s. 938.29, F.S.; providing payment requirements for certain legal assistance; providing requirements for deposit and use of funds collected for attorney's fees and costs; amending s. 938.30, F.S.; specifying financial obligations in criminal cases; amending s. 938.35, F.S.; revising provisions for collection of court-related financial obligations; amending s. 939.06, F.S., relating to acquitted defendant not liable for costs; removing county obligation to pay; amending s. 939.08, F.S.; revising requirements relating to certification of costs of the state courts system; amending s. 939.12, F.S.; providing for payment of costs against state in Supreme Court; reenacting s. 943.053, F.S., relating to the dissemination of criminal justice information, to incorporate the amendments to ss. 27.51 and 27.53, F.S.; amending s. 947.18, F.S.; conforming a reference; amending s. 948.03, F.S.; conforming a cross-reference; amending s. 960.001, F.S.; conforming references; amending s. 984.08, F.S.; conforming terminology; amending s. 985.203, F.S., relating to right to counsel; providing for imposition of costs of representation; amending ss. 985.215, 985.231, and 985.233, F.S.; conforming terminology; providing for a review of the Florida Accounting Information Resource subsystem and the Uniform Accounting System Manual with respect to Article V funding; requiring implementation of necessary revisions; providing for a study of county expenditures for court-related services; providing requirements; providing for reimbursement of travel costs; requiring a report; requiring a report on costs of court-related services provided by the counties; providing specific requirements; providing for reimbursement of certain expenses; providing an appropriation; providing a statement of important state interest; providing that the transfer of the funding responsibility for the state courts system shall not affect the validity of any judicial or administrative proceeding pending on the day of the transfer; providing that the entity providing appropriations on and after July 1, 2004, shall be considered the successor in interest to any existing contracts, but is not responsible for funding or payment of any service rendered or provided prior to July 1, 2004; authorizing judicial acts to be taken or performed on any day of the

week, including Sundays and holidays; authorizing surplus funds for teen courts to be used for juvenile drug courts; repealing certain services charges and fees imposed by counties prior to June 30, 2004; requiring each clerk of the court to submit to the Legislature a report identifying court-related functions and associated costs for county fiscal year 2003-2004; requiring each clerk of the court to notify the Clerk of Court Operations Conference of the schedule of court-related fees, service charges, and costs to be put into effect July 1, 2004; requiring the conference to submit such information to the Legislature; repealing s. 25.402, F.S., relating to the County Article V Trust Fund; repealing s. 27.005, F.S., relating to definitions applicable to state attorneys and public defenders; repealing s. 27.006, F.S., relating to court reporting services; repealing s. 27.271, F.S., relating to per diem and mileage for state attorneys and assistant state attorneys; repealing s. 27.33, F.S., relating to state attorney submission of annual budget; repealing s. 27.3455, F.S., relating to annual statement of court-related revenues and expenditures; repealing s. 27.36, F.S., relating to the Office of Prosecution Coordination; repealing s. 27.385, F.S., relating to state attorney budget expenditures and expenditure reports; repealing s. 27.605, F.S., relating to public defender budget expenditures and expenditure reports; repealing s. 29.002, F.S., relating to the basis for funding the state courts system; repealing s. 29.003, F.S., relating to the phase-in schedule for court funding; repealing s. 29.009, F.S., relating to the contingency fund for criminal-related costs of counties; repealing s. 29.011, F.S., relating to conflict counsel pilot projects; repealing s. 34.201, F.S., relating to the County Article V Trust Fund; repealing s. 43.28, F.S., relating to county provision of court facilities; repealing s. 50.071, F.S., relating to court docket funds; repealing s. 57.091, F.S., relating to costs refunded to counties in certain proceedings relating to state prisoners; repealing s. 218.325, F.S., relating to the uniform chart of accounts and financial reporting for court and justice system costs and revenues; repealing s. 914.06, F.S., relating to compensation of expert witnesses in criminal cases; repealing s. 925.035, F.S., relating to appointment and compensation of an attorney in capital cases and appeals from judgments imposing the death penalty; repealing s. 925.036, F.S., relating to compensation of appointed counsel and prohibition against reassignment or subcontracting of case to another attorney; repealing s. 925.037, F.S., relating to reimbursement of counties for fees paid to appointed counsel and circuit conflict committees; repealing s. 939.05, F.S., relating to discharge of insolvent defendant without payment of costs; repealing s. 939.07, F.S., relating to payment of defendant's witnesses; repealing s. 939.10, F.S., relating to duty of board of county commissioners to verify mileage and actual and necessary services and expenses; repealing s. 939.15, F.S., relating to costs paid by counties in cases of insolvency; providing for construction of the act in pari materia with laws enacted during the 2003 Regular Session of the Legislature; providing effective dates.

—was read the second time by title.

Senator Smith moved the following amendments which were adopted:

Amendment 1 (142830)—On page 93, lines 26-29, delete those lines and insert: *984.09 and 985.216.*

Amendment 2 (581784)—In title, on page 11, line 8, delete that line and insert: *state-shared revenues; amending s. 218.21, F.S.;*

Pursuant to Rule 4.19, **SB 34-A** as amended was ordered engrossed and then placed on the calendar of Bills on Third Reading.

SB 50-A—A bill to be entitled An act relating to workers' compensation; amending s. 440.02, F.S.; providing, revising, and deleting definitions; amending s. 440.05, F.S.; revising authorization to claim exemptions and requirements relating to submitting notice of election of exemption; specifying effect of exemption; providing a definition; amending s. 440.06, F.S.; revising provisions relating to failure to secure compensation; amending s. 440.077, F.S.; providing that a corporate officer electing to be exempt may not receive benefits; amending s. 440.09, F.S.; revising provisions relating to compensation for subsequent injuries; providing definitions; revising provisions relating to drug testing; specifying effect of criminal acts; creating s. 440.093, F.S.; providing for compensability of mental and nervous injuries; amending s. 440.10, F.S.; revising provisions relating to contractors and subcontractors with regard to liability for compensation; requiring subcontractors to provide evidence of workers' compensation coverage or proof of exemption to a contractor; deleting provisions relating to independent contractors;

amending s. 440.1025, F.S.; revising requirements relating to workplace safety programs; amending s. 440.103, F.S.; providing conditions for applying for building permits; amending s. 440.105, F.S.; increasing criminal penalties for certain violations; providing sanctions for violation of stop-work orders and presentation of certain false or misleading statements as evidence; amending s. 440.1051, F.S.; increasing criminal penalty for false reports; amending s. 440.107, F.S.; providing additional powers to the Department of Financial Services relating to compliance and enforcement; providing a definition; providing penalties; amending s. 440.11, F.S.; providing exclusiveness of liability; revising provisions relating to employer and safety consultant immunity from liability; amending s. 440.13, F.S.; providing for practice parameters and treatment protocols; revising provisions relating to provider reimbursement; requiring revision of specified reimbursement schedules; providing for release of information; providing additional criteria for independent medical examinations; providing a definition; providing standards for medical care under ch. 440, F.S.; providing penalties; amending s. 440.134, F.S.; revising provisions relating to managed care arrangements; revising definitions; providing for assignment of a medical care coordinator; amending s. 440.14, F.S.; revising provisions relating to calculation of average weekly wage for injured employees; conforming cross-references; amending s. 440.15, F.S.; providing additional limitations on compensation for permanent total disability; providing a definition; specifying impairment benefits and providing for partial reduction under certain circumstances; deleting provisions relating to supplemental benefits; amending s. 440.151, F.S.; specifying compensability of occupational disease; providing a definition; amending s. 440.16, F.S.; increasing the limits on the amount of certain benefits paid as compensation for death; amending s. 440.185, F.S.; specifying duty of employer upon receipt of notice of injury or death; increasing penalties for noncompliance; amending s. 440.192, F.S.; revising procedure for resolving benefit disputes; requiring a petition for benefits to include all claims which are ripe, due, and owing; providing that the Chief Judge, rather than the Deputy Chief Judge, shall refer petitions for benefits; creating s. 440.1926, F.S.; providing for alternative dispute resolution and arbitration of claims; amending s. 440.20, F.S.; revising provisions relating to timely payment of compensation and medical bills and penalties for late payment; prohibiting the clerk of the circuit court from assessing certain fees or costs; amending s. 440.25, F.S.; revising procedures for mediation and hearings; amending s. 440.34, F.S.; revising provisions relating to the award of attorney's fees; amending s. 440.38, F.S.; providing requirement for employers with coverage provided by insurers from outside the state; amending s. 440.381, F.S.; providing criminal penalty for unlawful applications; requiring on-site audits of employers under certain circumstances; amending s. 440.42, F.S.; revising provision relating to notice of cancellation of coverage; amending s. 440.49, F.S., to conform cross-references; amending s. 440.491, F.S.; providing training and education requirements and benefits relating to reemployment of injured workers; providing for rules; amending s. 440.525, F.S.; providing for the Office of Insurance Regulation of the Financial Services Commission to conduct examinations and investigations of claims-handling entities; providing penalties; providing for rules; amending s. 627.162, F.S.; revising delinquency and collection fee for late payment of premium installments; creating s. 627.285, F.S.; providing for annual actuarial peer review of rating organization processes; requiring a report; amending s. 627.311, F.S.; revising membership of the board of governors of the workers' compensation joint underwriting plan; requiring participation in safety programs; providing for an additional subplan within the joint underwriting plan for workers' compensation insurance; providing for rates, surcharges, and assessments; limiting assessment powers; amending s. 921.0022, F.S.; revising the offense severity ranking chart to reflect changes in penalties under the act; requiring a report to the Legislature from the Department of Financial Services regarding provisions of law relating to enforcement; amending ss. 946.523 and 985.315, F.S., to conform cross-references; establishing a Joint Select Committee on Workers' Compensation Rating Reform and specifying duties thereof; providing for termination of the committee; requiring the board of governors of the workers' compensation joint underwriting plan to submit a report to the Legislature; amending s. 443.1715, F.S.; revising provisions relating to records and reports; providing for disclosure of specified information; amending s. 625.989, F.S.; providing that the Department of Financial Services shall prepare an annual report relating to workers' compensation fraud and compliance; amending s. 626.9891, F.S.; amending reporting requirements for insurers; providing penalties for noncompliance; providing for rules; repealing s. 440.1925, F.S., relating to procedure for resolving maximum medical improvement or permanent impairment disputes; providing that amendments to ss. 440.02 and 440.15, F.S., do not affect certain disability, determination, and benefits;

providing for construction of the act in pari materia with laws enacted during the Regular Session of the Legislature; providing effective dates.

—was read the second time by title.

On motion by Senator Clary, further consideration of **SB 50-A** was deferred.

SENATOR CARLTON PRESIDING

THE PRESIDENT PRESIDING

RECESS

The President declared the Senate in recess at 12:13 p.m. to reconvene at 1:30 p.m.

AFTERNOON SESSION

The Senate was called to order by the President at 1:35 p.m. A quorum present—38:

Mr. President	Diaz de la Portilla	Peaden
Alexander	Dockery	Posey
Argenziano	Fasano	Pruitt
Aronberg	Geller	Saunders
Atwater	Haridopolos	Sebesta
Bennett	Hill	Siplin
Bullard	Jones	Smith
Campbell	Klein	Villalobos
Carlton	Lawson	Wasserman Schultz
Clary	Lee	Webster
Constantine	Lynn	Wilson
Cowin	Margolis	Wise
Crist	Miller	

SPECIAL ORDER CALENDAR, continued

On motion by Senator Clary, the Senate resumed consideration of—

SB 50-A—A bill to be entitled An act relating to workers' compensation; amending s. 440.02, F.S.; providing, revising, and deleting definitions; amending s. 440.05, F.S.; revising authorization to claim exemptions and requirements relating to submitting notice of election of exemption; specifying effect of exemption; providing a definition; amending s. 440.06, F.S.; revising provisions relating to failure to secure compensation; amending s. 440.077, F.S.; providing that a corporate officer electing to be exempt may not receive benefits; amending s. 440.09, F.S.; revising provisions relating to compensation for subsequent injuries; providing definitions; revising provisions relating to drug testing; specifying effect of criminal acts; creating s. 440.093, F.S.; providing for compensability of mental and nervous injuries; amending s. 440.10, F.S.; revising provisions relating to contractors and subcontractors with regard to liability for compensation; requiring subcontractors to provide evidence of workers' compensation coverage or proof of exemption to a contractor; deleting provisions relating to independent contractors; amending s. 440.1025, F.S.; revising requirements relating to workplace safety programs; amending s. 440.103, F.S.; providing conditions for applying for building permits; amending s. 440.105, F.S.; increasing criminal penalties for certain violations; providing sanctions for violation of stop-work orders and presentation of certain false or misleading statements as evidence; amending s. 440.1051, F.S.; increasing criminal penalty for false reports; amending s. 440.107, F.S.; providing additional powers to the Department of Financial Services relating to compliance and enforcement; providing a definition; providing penalties; amending s. 440.11, F.S.; providing exclusiveness of liability; revising provisions relating to employer and safety consultant immunity from liability; amending s. 440.13, F.S.; providing for practice parameters and treatment protocols; revising provisions relating to provider reimbursement; requiring revision of specified reimbursement schedules; providing for release of information; providing additional criteria for independent medical examinations; providing a definition; providing standards for medical care under ch. 440, F.S.; providing penalties; amending s. 440.134, F.S.; revising provisions relating to managed care arrangements; revising definitions; providing for assignment of a medical care coordinator; amending s. 440.14, F.S.; revising provisions relating to

calculation of average weekly wage for injured employees; conforming cross-references; amending s. 440.15, F.S.; providing additional limitations on compensation for permanent total disability; providing a definition; specifying impairment benefits and providing for partial reduction under certain circumstances; deleting provisions relating to supplemental benefits; amending s. 440.151, F.S.; specifying compensability of occupational disease; providing a definition; amending s. 440.16, F.S.; increasing the limits on the amount of certain benefits paid as compensation for death; amending s. 440.185, F.S.; specifying duty of employer upon receipt of notice of injury or death; increasing penalties for noncompliance; amending s. 440.192, F.S.; revising procedure for resolving benefit disputes; requiring a petition for benefits to include all claims which are ripe, due, and owing; providing that the Chief Judge, rather than the Deputy Chief Judge, shall refer petitions for benefits; creating s. 440.1926, F.S.; providing for alternative dispute resolution and arbitration of claims; amending s. 440.20, F.S.; revising provisions relating to timely payment of compensation and medical bills and penalties for late payment; prohibiting the clerk of the circuit court from assessing certain fees or costs; amending s. 440.25, F.S.; revising procedures for mediation and hearings; amending s. 440.34, F.S.; revising provisions relating to the award of attorney's fees; amending s. 440.38, F.S.; providing requirement for employers with coverage provided by insurers from outside the state; amending s. 440.381, F.S.; providing criminal penalty for unlawful applications; requiring on-site audits of employers under certain circumstances; amending s. 440.42, F.S.; revising provision relating to notice of cancellation of coverage; amending s. 440.49, F.S., to conform cross-references; amending s. 440.491, F.S.; providing training and education requirements and benefits relating to reemployment of injured workers; providing for rules; amending s. 440.525, F.S.; providing for the Office of Insurance Regulation of the Financial Services Commission to conduct examinations and investigations of claims-handling entities; providing penalties; providing for rules; amending s. 627.162, F.S.; revising delinquency and collection fee for late payment of premium installments; creating s. 627.285, F.S.; providing for annual actuarial peer review of rating organization processes; requiring a report; amending s. 627.311, F.S.; revising membership of the board of governors of the workers' compensation joint underwriting plan; requiring participation in safety programs; providing for an additional subplan within the joint underwriting plan for workers' compensation insurance; providing for rates, surcharges, and assessments; limiting assessment powers; amending s. 921.0022, F.S.; revising the offense severity ranking chart to reflect changes in penalties under the act; requiring a report to the Legislature from the Department of Financial Services regarding provisions of law relating to enforcement; amending ss. 946.523 and 985.315, F.S., to conform cross-references; establishing a Joint Select Committee on Workers' Compensation Rating Reform and specifying duties thereof; providing for termination of the committee; requiring the board of governors of the workers' compensation joint underwriting plan to submit a report to the Legislature; amending s. 443.1715, F.S.; revising provisions relating to records and reports; providing for disclosure of specified information; amending s. 625.989, F.S.; providing that the Department of Financial Services shall prepare an annual report relating to workers' compensation fraud and compliance; amending s. 626.9891, F.S.; amending reporting requirements for insurers; providing penalties for noncompliance; providing for rules; repealing s. 440.1925, F.S., relating to procedure for resolving maximum medical improvement or permanent impairment disputes; providing that amendments to ss. 440.02 and 440.15, F.S., do not affect certain disability, determination, and benefits; providing for construction of the act in pari materia with laws enacted during the Regular Session of the Legislature; providing effective dates.

—which was previously considered this day.

Senator Campbell moved the following amendment which failed:

Amendment 1 (635010)(with title amendment)—Delete everything after the enacting clause and insert:

Section 1. Effective upon this act becoming a law, subsections (15), (38), (40), (41), and (42) of section 440.02, Florida Statutes, are amended to read:

440.02 Definitions.—When used in this chapter, unless the context clearly requires otherwise, the following terms shall have the following meanings:

(15)(a) “Employee” means any person engaged in any employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed, and includes, but is not limited to, aliens and minors.

(b) “Employee” includes any person who is an officer of a corporation and who performs services for remuneration for such corporation within this state, whether or not such services are continuous.

1. Any officer of a corporation may elect to be exempt from this chapter by filing written notice of the election with the department as provided in s. 440.05.

2. As to officers of a corporation who are actively engaged in the construction industry, no more than three officers may elect to be exempt from this chapter by filing written notice of the election with the department as provided in s. 440.05. ~~However, any exemption obtained by a corporate officer of a corporation actively engaged in the construction industry is not applicable with respect to any commercial building project estimated to be valued at \$250,000 or greater.~~

3. An officer of a corporation who elects to be exempt from this chapter by filing a written notice of the election with the department as provided in s. 440.05 is not an employee.

Services are presumed to have been rendered to the corporation if the officer is compensated by other than dividends upon shares of stock of the corporation which the officer owns.

(c)1. “Employee” includes a sole proprietor or a partner who devotes full time to the proprietorship or partnership and, except as provided in this paragraph, elects to be included in the definition of employee by filing notice thereof as provided in s. 440.05. Partners or sole proprietors actively engaged in the construction industry are considered employees unless they elect to be excluded from the definition of employee by filing written notice of the election with the department as provided in s. 440.05. However, no more than three partners in a partnership that is actively engaged in the construction industry may elect to be excluded. A sole proprietor or partner who is actively engaged in the construction industry and who elects to be exempt from this chapter by filing a written notice of the election with the department as provided in s. 440.05 is not an employee. For purposes of this chapter, an independent contractor is an employee unless he or she meets all of the conditions set forth in subparagraph (d)1.

2. ~~Notwithstanding the provisions of subparagraph 1., the term “employee” includes a sole proprietor or partner actively engaged in the construction industry with respect to any commercial building project estimated to be valued at \$250,000 or greater. Any exemption obtained is not applicable, with respect to work performed at such a commercial building project.~~

(d) “Employee” does not include:

1. An independent contractor, if:

a. The independent contractor maintains a separate business with his or her own work facility, truck, equipment, materials, or similar accommodations;

b. The independent contractor holds or has applied for a federal employer identification number, unless the independent contractor is a sole proprietor who is not required to obtain a federal employer identification number under state or federal requirements;

c. The independent contractor performs or agrees to perform specific services or work for specific amounts of money and controls the means of performing the services or work;

d. The independent contractor incurs the principal expenses related to the service or work that he or she performs or agrees to perform;

e. The independent contractor is responsible for the satisfactory completion of work or services that he or she performs or agrees to perform and is or could be held liable for a failure to complete the work or services;

f. The independent contractor receives compensation for work or services performed for a commission or on a per-job or competitive-bid basis and not on any other basis;

g. The independent contractor may realize a profit or suffer a loss in connection with performing work or services;

h. The independent contractor has continuing or recurring business liabilities or obligations; and

i. The success or failure of the independent contractor's business depends on the relationship of business receipts to expenditures.

However, the determination as to whether an individual included in the Standard Industrial Classification Manual of 1987, Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762, 0781, 0782, 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436, 2448, or 2449, or a newspaper delivery person, is an independent contractor is governed not by the criteria in this paragraph but by common-law principles, giving due consideration to the business activity of the individual. ~~Notwithstanding the provisions of this paragraph or any other provision of this chapter, with respect to any commercial building project estimated to be valued at \$250,000 or greater, a person who is actively engaged in the construction industry is not an independent contractor and is either an employer or an employee who may not be exempt from the coverage requirements of this chapter.~~

2. A real estate salesperson or agent, if that person agrees, in writing, to perform for remuneration solely by way of commission.

3. Bands, orchestras, and musical and theatrical performers, including disk jockeys, performing in licensed premises as defined in chapter 562, if a written contract evidencing an independent contractor relationship is entered into before the commencement of such entertainment.

4. An owner-operator of a motor vehicle who transports property under a written contract with a motor carrier which evidences a relationship by which the owner-operator assumes the responsibility of an employer for the performance of the contract, if the owner-operator is required to furnish the necessary motor vehicle equipment and all costs incidental to the performance of the contract, including, but not limited to, fuel, taxes, licenses, repairs, and hired help; and the owner-operator is paid a commission for transportation service and is not paid by the hour or on some other time-measured basis.

5. A person whose employment is both casual and not in the course of the trade, business, profession, or occupation of the employer.

6. A volunteer, except a volunteer worker for the state or a county, municipality, or other governmental entity. A person who does not receive monetary remuneration for services is presumed to be a volunteer unless there is substantial evidence that a valuable consideration was intended by both employer and employee. For purposes of this chapter, the term "volunteer" includes, but is not limited to:

a. Persons who serve in private nonprofit agencies and who receive no compensation other than expenses in an amount less than or equivalent to the standard mileage and per-diem expenses provided to salaried employees in the same agency or, if such agency does not have salaried employees who receive mileage and per diem, then such volunteers who receive no compensation other than expenses in an amount less than or equivalent to the customary mileage and per diem paid to salaried workers in the community as determined by the department; and

b. Volunteers participating in federal programs established under Pub. L. No. 93-113.

7. Any officer of a corporation who elects to be exempt from this chapter.

8. A sole proprietor or officer of a corporation who actively engages in the construction industry, and a partner in a partnership that is actively engaged in the construction industry, who elects to be exempt from the provisions of this chapter. Such sole proprietor, officer, or partner is not an employee for any reason until the notice of revocation of election filed pursuant to s. 440.05 is effective.

9. An exercise rider who does not work for a single horse farm or breeder, and who is compensated for riding on a case-by-case basis, provided a written contract is entered into prior to the commencement of such activity which evidences that an employee/employer relationship does not exist.

10. A taxicab, limousine, or other passenger vehicle-for-hire driver who operates said vehicles pursuant to a written agreement with a company which provides any dispatch, marketing, insurance, communications, or other services under which the driver and any fees or charges

paid by the driver to the company for such services are not conditioned upon, or expressed as a proportion of, fare revenues.

11. A person who performs services as a sports official for an entity sponsoring an interscholastic sports event or for a public entity or private, nonprofit organization that sponsors an amateur sports event. For purposes of this subparagraph, such a person is an independent contractor. For purposes of this subparagraph, the term "sports official" means any person who is a neutral participant in a sports event, including, but not limited to, umpires, referees, judges, linespersons, scorekeepers, or timekeepers. This subparagraph does not apply to any person employed by a district school board who serves as a sports official as required by the employing school board or who serves as a sports official as part of his or her responsibilities during normal school hours.

(38) "Catastrophic injury" means a permanent impairment constituted by:

(a) Spinal cord injury involving severe paralysis of an arm, a leg, or the trunk;

(b) Amputation of an arm, a hand, a foot, or a leg involving the effective loss of use of that appendage;

(c) Severe brain or closed-head injury as evidenced by:

1. Severe sensory or motor disturbances;

2. Severe communication disturbances;

3. Severe complex integrated disturbances of cerebral function;

4. Severe episodic neurological disorders; or

5. Other severe brain and closed-head injury conditions at least as severe in nature as any condition provided in subparagraphs 1.-4.;

(d) Second-degree or third-degree burns of 25 percent or more of the total body surface or third-degree burns of 5 percent or more to the face and hands; or

(e) Total or industrial blindness; ~~or~~

~~(f) Any other injury that would otherwise qualify under this chapter of a nature and severity that would qualify an employee to receive disability income benefits under Title II or supplemental security income benefits under Title XVI of the federal Social Security Act as the Social Security Act existed on July 1, 1992, without regard to any time limitations provided under that act.~~

(40) "Statement," for the purposes of ss. 440.105 and 440.106, *shall include the exact fraud statement language in s. 440.105(7). This requirement includes, but is not limited to, any notice, representation, statement, proof of injury, bill for services, diagnosis, prescription, hospital or doctor record, X ray, test result, or other evidence of loss, injury, or expense.*

~~(41) "Commercial building" means any building or structure intended for commercial or industrial use, or any building or structure intended for multifamily use of more than four dwelling units, as well as any accessory use structures constructed in conjunction with the principal structure. The term, "commercial building," does not include the conversion of any existing residential building to a commercial building.~~

~~(42) "Residential building" means any building or structure intended for residential use containing four or fewer dwelling units and any structures intended as an accessory use to the residential structure.~~

Section 2. Effective January 1, 2004, subsections (8), (15), and (16) of section 440.02, Florida Statutes, as amended by this act, are amended to read:

440.02 Definitions.—When used in this chapter, unless the context clearly requires otherwise, the following terms shall have the following meanings:

(8) "Construction industry" means for-profit activities involving ~~the carrying out of~~ any building, clearing, filling, excavation, or substantial improvement in the size or use of any structure or the appearance of any

land. ~~When appropriate to the context, "construction" refers to the act of construction or the result of construction. However, "construction" does not mean a homeowner's landowner's act of construction or the result of a construction upon his or her own premises, provided such premises are not intended to be sold, or resold, or leased by the owner within 1 year after the commencement of construction. The division may, by rule, establish standard industrial classification codes and definitions thereof which meet the criteria of the term "construction industry" as set forth in this section.~~

(15)(a) "Employee" means any person who receives remuneration from an employer for the performance of any work or service while engaged in any employment under any appointment or contract for hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed, and includes, but is not limited to, aliens and minors.

(b) "Employee" includes any person who is an officer of a corporation and who performs services for remuneration for such corporation within this state, whether or not such services are continuous.

1. Any officer of a corporation may elect to be exempt from this chapter by filing written notice of the election with the department as provided in s. 440.05.

2. As to officers of a corporation who are actively engaged in the construction industry, no more than three officers of a corporation or of any group of affiliated corporations may elect to be exempt from this chapter by filing written notice of the election with the department as provided in s. 440.05. *Officers must be shareholders, each owning at least 10 percent of the stock of such corporation and listed as an officer of such corporation with the Division of Corporations of the Department of State, in order to elect exemptions under this chapter. For purposes of this subparagraph, the term "affiliated" means and includes one or more corporations or entities, any one of which is a corporation engaged in the construction industry, under the same or substantially the same control of a group of business entities which are connected or associated so that one entity controls or has the power to control each of the other business entities. The term "affiliated" includes, but is not limited to, the officers, directors, executives, shareholders active in management, employees, and agents of the affiliated corporation. The ownership by one business entity of a controlling interest in another business entity or a pooling of equipment or income among business entities shall be prima facie evidence that one business is affiliated with the other.*

3. An officer of a corporation who elects to be exempt from this chapter by filing a written notice of the election with the department as provided in s. 440.05 is not an employee.

Services are presumed to have been rendered to the corporation if the officer is compensated by other than dividends upon shares of stock of the corporation which the officer owns.

(c) "Employee" includes:

1. A sole proprietor or a partner who is not engaged in the construction industry, devotes full time to the proprietorship or partnership, and, ~~except as provided in this paragraph,~~ elects to be included in the definition of employee by filing notice thereof as provided in s. 440.05. ~~Partners or sole proprietors actively engaged in the construction industry are considered employees unless they elect to be excluded from the definition of employee by filing written notice of the election with the department as provided in s. 440.05. However, no more than three partners in a partnership that is actively engaged in the construction industry may elect to be excluded. A sole proprietor or partner who is actively engaged in the construction industry and who elects to be exempt from this chapter by filing a written notice of the election with the department as provided in s. 440.05 is not an employee. For purposes of this chapter, an independent contractor is an employee unless he or she meets all of the conditions set forth in subparagraph (d)1.~~

2. All persons who are being paid by a construction contractor as a subcontractor, unless the subcontractor has validly elected an exemption as permitted by this chapter, or has otherwise secured the payment of compensation coverage as a subcontractor, consistent with s. 440.10, for work performed by or as a subcontractor.

3. An independent contractor working or performing services in the construction industry.

4. A sole proprietor who engages in the construction industry and a partner or partnership that is engaged in the construction industry.

(d) "Employee" does not include:

1. An independent contractor who is not engaged in the construction industry, ~~if:~~

a. In order to meet the definition of independent contractor, at least four of the following criteria must be met:

(I) The independent contractor maintains a separate business with his or her own work facility, truck, equipment, materials, or similar accommodations;

(II) The independent contractor holds or has applied for a federal employer identification number, unless the independent contractor is a sole proprietor who is not required to obtain a federal employer identification number under state or federal regulations;

(III) The independent contractor receives compensation for services rendered or work performed and such compensation is paid to a business rather than to an individual;

(IV) The independent contractor holds one or more bank accounts in the name of the business entity for purposes of paying business expenses or other expenses related to services rendered or work performed for compensation;

(V) The independent contractor performs work or is able to perform work for any entity in addition to or besides the employer at his or her own election without the necessity of completing an employment application or process; or

(VI) The independent contractor receives compensation for work or services rendered on a competitive-bid basis or completion of a task or a set of tasks as defined by a contractual agreement, unless such contractual agreement expressly states that an employment relationship exists. ~~The independent contractor maintains a separate business with his or her own work facility, truck, equipment, materials, or similar accommodations;~~

b. If four of the criteria listed in sub-subparagraph a. do not exist, an individual may still be presumed to be an independent contractor and not an employee based on full consideration of the nature of the individual situation with regard to satisfying any of the following conditions:

(I) The independent contractor performs or agrees to perform specific services or work for a specific amount of money and controls the means of performing the services or work.

(II) The independent contractor incurs the principal expenses related to the service or work that he or she performs or agrees to perform.

(III) The independent contractor is responsible for the satisfactory completion of the work or services that he or she performs or agrees to perform.

(IV) The independent contractor receives compensation for work or services performed for a commission or on a per-job basis and not on any other basis.

(V) The independent contractor may realize a profit or suffer a loss in connection with performing work or services.

(VI) The independent contractor has continuing or recurring business liabilities or obligations.

(VII) The success or failure of the independent contractor's business depends on the relationship of business receipts to expenditures. ~~The independent contractor holds or has applied for a federal employer identification number, unless the independent contractor is a sole proprietor who is not required to obtain a federal employer identification number under state or federal requirements;~~

c. Notwithstanding anything to the contrary in this subparagraph, an individual claiming to be an independent contractor has the burden of proving that he or she is an independent contractor for purposes of this chapter. ~~The independent contractor performs or agrees to perform spe-~~

~~specific services or work for specific amounts of money and controls the means of performing the services or work;~~

~~d.—The independent contractor incurs the principal expenses related to the service or work that he or she performs or agrees to perform;~~

~~e.—The independent contractor is responsible for the satisfactory completion of work or services that he or she performs or agrees to perform and is or could be held liable for a failure to complete the work or services;~~

~~f.—The independent contractor receives compensation for work or services performed for a commission or on a per-job or competitive bid basis and not on any other basis;~~

~~g.—The independent contractor may realize a profit or suffer a loss in connection with performing work or services;~~

~~h.—The independent contractor has continuing or recurring business liabilities or obligations; and~~

~~i.—The success or failure of the independent contractor's business depends on the relationship of business receipts to expenditures.~~

However, the determination as to whether an individual included in the Standard Industrial Classification Manual of 1987, Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762, 0781, 0782, 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436, 2448, or 2449, or a newspaper delivery person, is an independent contractor is governed not by the criteria in this paragraph but by common-law principles, giving due consideration to the business activity of the individual.

2. A real estate salesperson or agent, if that person agrees, in writing, to perform for remuneration solely by way of commission.

3. Bands, orchestras, and musical and theatrical performers, including disk jockeys, performing in licensed premises as defined in chapter 562, if a written contract evidencing an independent contractor relationship is entered into before the commencement of such entertainment.

4. An owner-operator of a motor vehicle who transports property under a written contract with a motor carrier which evidences a relationship by which the owner-operator assumes the responsibility of an employer for the performance of the contract, if the owner-operator is required to furnish the necessary motor vehicle equipment and all costs incidental to the performance of the contract, including, but not limited to, fuel, taxes, licenses, repairs, and hired help; and the owner-operator is paid a commission for transportation service and is not paid by the hour or on some other time-measured basis.

5. A person whose employment is both casual and not in the course of the trade, business, profession, or occupation of the employer.

6. A volunteer, except a volunteer worker for the state or a county, municipality, or other governmental entity. A person who does not receive monetary remuneration for services is presumed to be a volunteer unless there is substantial evidence that a valuable consideration was intended by both employer and employee. For purposes of this chapter, the term "volunteer" includes, but is not limited to:

a. Persons who serve in private nonprofit agencies and who receive no compensation other than expenses in an amount less than or equivalent to the standard mileage and per diem expenses provided to salaried employees in the same agency or, if such agency does not have salaried employees who receive mileage and per diem, then such volunteers who receive no compensation other than expenses in an amount less than or equivalent to the customary mileage and per diem paid to salaried workers in the community as determined by the department; and

b. Volunteers participating in federal programs established under Pub. L. No. 93-113.

7. *Unless otherwise prohibited by this chapter*, any officer of a corporation who elects to be exempt from this chapter. *Such officer is not an employee for any reason under this chapter until the notice of revocation of election filed pursuant to s. 440.05 is effective.*

8. *An a sole proprietor or officer of a corporation who actively engages in the construction industry, and a partner in a partnership that*

is actively engaged in the construction industry, who elects to be exempt from the provisions of this chapter, as otherwise permitted by this chapter. Such sole proprietor, officer, or partner is not an employee for any reason until the notice of revocation of election filed pursuant to s. 440.05 is effective.

9. An exercise rider who does not work for a single horse farm or breeder, and who is compensated for riding on a case-by-case basis, provided a written contract is entered into prior to the commencement of such activity which evidences that an employee/employer relationship does not exist.

10. A taxicab, limousine, or other passenger vehicle-for-hire driver who operates said vehicles pursuant to a written agreement with a company which provides any dispatch, marketing, insurance, communications, or other services under which the driver and any fees or charges paid by the driver to the company for such services are not conditioned upon, or expressed as a proportion of, fare revenues.

11. A person who performs services as a sports official for an entity sponsoring an interscholastic sports event or for a public entity or private, nonprofit organization that sponsors an amateur sports event. For purposes of this subparagraph, such a person is an independent contractor. For purposes of this subparagraph, the term "sports official" means any person who is a neutral participant in a sports event, including, but not limited to, umpires, referees, judges, linespersons, scorekeepers, or timekeepers. This subparagraph does not apply to any person employed by a district school board who serves as a sports official as required by the employing school board or who serves as a sports official as part of his or her responsibilities during normal school hours.

12. *Medicaid-enrolled clients under chapter 393 who are excluded from the definition of employment under s. 443.036(21)(d)5. and served by Adult Day Training Services under the Home and Community-Based Medicaid Waiver program in a sheltered workshop setting licensed by the United States Department of Labor for the purpose of training and earning less than the federal hourly minimum wage.*

(16)(a) "Employer" means the state and all political subdivisions thereof, all public and quasi-public corporations therein, every person carrying on any employment, and the legal representative of a deceased person or the receiver or trustees of any person. "Employer" also includes employment agencies, employee leasing companies, and similar agents who provide employees to other persons. If the employer is a corporation, parties in actual control of the corporation, including, but not limited to, the president, officers who exercise broad corporate powers, directors, and all shareholders who directly or indirectly own a controlling interest in the corporation, are considered the employer for the purposes of ss. 440.105, ~~and~~ 440.106, and 440.107.

(b) *A homeowner shall not be considered the employer of persons hired by the homeowner to carry out construction on the homeowner's own premises if those premises are not intended for immediate lease, sale, or resale.*

(c) *Facilities serving individuals under subparagraph (15)(d)12. shall be considered agents of the Agency for Health Care Administration as it relates to providing Adult Day Training Services under the Home and Community-Based Medicaid Waiver program and not employers or third parties for the purpose of limiting or denying Medicaid benefits.*

Section 3. Effective January 1, 2004, subsections (3), (4), (6), (10), (11), and (12) of section 440.05, Florida Statutes, are amended, present subsection (13) is renumbered as subsection (11) and amended, and new subsections (12), (13), (14), and (15) are added to that section, to read:

440.05 Election of exemption; revocation of election; notice; certification.—

(3) Each ~~sole proprietor, partner, or~~ officer of a corporation who is ~~actively engaged in the construction industry and who elects an exemption from this chapter or who, after electing such exemption, revokes that exemption, must mail a written notice to such effect to the department on a form prescribed by the department. The notice of election to be exempt from the provisions of this chapter must be notarized and under oath. The notice of election to be exempt which is submitted to the department by the sole proprietor, partner, or officer of a corporation who is allowed to claim an exemption as provided by this chapter must list the name, federal tax identification number, social security number,~~

all certified or registered licenses issued pursuant to chapter 489 held by the person seeking the exemption, a copy of relevant documentation as to employment status filed with the Internal Revenue Service as specified by the department, a copy of the relevant occupational license in the primary jurisdiction of the business, and, ~~for corporate officers and partners, the registration number of the corporation or partnership filed with the Division of Corporations of the Department of State along with a copy of the stock certificate evidencing the required ownership under this chapter.~~ The notice of election to be exempt must identify each ~~sole proprietorship, partnership, or corporation that employs the person electing the exemption and must list the social security number or federal tax identification number of each such employer and the additional documentation required by this section.~~ In addition, the notice of election to be exempt must provide that the ~~sole proprietor, partner, or officer electing an exemption is not entitled to benefits under this chapter, must provide that the election does not exceed exemption limits for officers and partnerships provided in s. 440.02, and must certify that any employees of the corporation whose sole proprietor, partner, or officer elects electing an exemption are covered by workers' compensation insurance.~~ Upon receipt of the notice of the election to be exempt, receipt of all application fees, and a determination by the department that the notice meets the requirements of this subsection, the department shall issue a certification of the election to the ~~sole proprietor, partner, or officer, unless the department determines that the information contained in the notice is invalid. The department shall revoke a certificate of election to be exempt from coverage upon a determination by the department that the person does not meet the requirements for exemption or that the information contained in the notice of election to be exempt is invalid. The certificate of election must list the name names of the sole proprietorship, partnership, or corporation listed in the request for exemption. A new certificate of election must be obtained each time the person is employed by a new sole proprietorship, partnership, or different corporation that is not listed on the certificate of election. A copy of the certificate of election must be sent to each workers' compensation carrier identified in the request for exemption. Upon filing a notice of revocation of election, an a sole proprietor, partner, or officer who is a subcontractor or an officer of a corporate subcontractor must notify her or his contractor. Upon revocation of a certificate of election of exemption by the department, the department shall notify the workers' compensation carriers identified in the request for exemption.~~

(4) The notice of election to be exempt from the provisions of this chapter must contain a notice that clearly states in substance the following: "Any person who, knowingly and with intent to injure, defraud, or deceive the department or any employer or employee, insurance company, or any other person ~~purposes program,~~ files a notice of election to be exempt containing any false or misleading information is guilty of a felony of the third degree." Each person filing a notice of election to be exempt shall personally sign the notice and attest that he or she has reviewed, understands, and acknowledges the foregoing notice.

(6) A construction industry certificate of election to be exempt which is issued in accordance with this section shall be valid for 2 years after the effective date stated thereon. Both the effective date and the expiration date must be listed on the face of the certificate by the department. The construction industry certificate must expire at midnight, 2 years from its issue date, as noted on the face of the exemption certificate. Any person who has received from the division a construction industry certificate of election to be exempt which is in effect on December 31, 1998, shall file a new notice of election to be exempt by the last day in his or her birth month following December 1, 1998. A construction industry certificate of election to be exempt may be revoked before its expiration by the ~~sole proprietor, partner, or officer for whom it was issued or by the department for the reasons stated in this section.~~ At least 60 days prior to the expiration date of a construction industry certificate of exemption issued after December 1, 1998, the department shall send notice of the expiration date and an application for renewal to the certificate-holder at the address on the certificate.

(10) Each ~~sole proprietor, partner, or officer of a corporation who is actively engaged in the construction industry and who elects an exemption from this chapter shall maintain business records as specified by the division by rule, which rules must include the provision that any corporation with exempt officers and any partnership actively engaged in the construction industry with exempt partners must maintain written statements of those exempted persons affirmatively acknowledging each such individual's exempt status.~~

(11) ~~Any sole proprietor or partner actively engaged in the construction industry claiming an exemption under this section shall maintain a copy of his or her federal income tax records for each of the immediately previous 3 years in which he or she claims an exemption. Such federal income tax records must include a complete copy of the following for each year in which an exemption is claimed:~~

(a) ~~For sole proprietors, a copy of Federal Income Tax Form 1040 and its accompanying Schedule C;~~

(b) ~~For partners, a copy of the partner's Federal Income Tax Schedule K-1 (Form 1065) and Federal Income Tax Form 1040 and its accompanying Schedule E.~~

A sole proprietor or partner shall produce, upon request by the division, a copy of those documents together with a statement by the sole proprietor or partner that the tax records provided are true and accurate copies of what the sole proprietor or partner has filed with the federal Internal Revenue Service. The statement must be signed under oath by the sole proprietor or partner and must be notarized. The division shall issue a stop-work order under s. 440.107(5) to any sole proprietor or partner who fails or refuses to produce a copy of the tax records and affidavit required under this paragraph to the division within 3 business days after the request is made.

(12) ~~For those sole proprietors or partners that have not been in business long enough to provide the information required of an established business, the division shall require such sole proprietor or partner to provide copies of the most recently filed Federal Income Tax Form 1040. The division shall establish by rule such other criteria to show that the sole proprietor or partner intends to engage in a legitimate enterprise within the construction industry and is not otherwise attempting to evade the requirements of this section. The division shall establish by rule the form and format of financial information required to be submitted by such employers.~~

(11)(13) Any corporate officer ~~permitted by this chapter to claim claiming an exemption under this section~~ must be listed on the records of this state's Secretary of State, Division of Corporations, as a corporate officer. If the person who claims an exemption as a corporate officer is not so listed on the records of the Secretary of State, the individual must provide to the division, upon request by the division, a notarized affidavit stating that the individual is a bona fide officer of the corporation and stating the date his or her appointment or election as a corporate officer became or will become effective. The statement must be signed under oath by both the officer and the president or chief operating officer of the corporation and must be notarized. The division shall issue a stop-work order under s. 440.107(1) to any corporation who employs a person who claims to be exempt as a corporate officer but who fails or refuses to produce the documents required under this subsection to the division within 3 business days after the request is made.

(12) *Certificates of election to be exempt issued under subsection (3) shall apply only to the corporate officer named on the notice of election to be exempt and apply only within the scope of the business or trade listed on the notice of election to be exempt.*

(13) *Notices of election to be exempt and certificates of election to be exempt shall be subject to revocation if, at any time after the filing of the notice or the issuance of the certificate, the person named on the notice or certificate no longer meets the requirements of this section for issuance of a certificate. The department shall revoke a certificate at any time for failure of the person named on the certificate to meet the requirements of this section.*

(14) *An officer of a corporation who elects exemption from this chapter by filing a certificate of election under this section may not recover benefits or compensation under this chapter. For purposes of determining the appropriate premium for workers' compensation coverage, carriers may not consider any officer of a corporation who validly meets the requirements of this section to be an employee.*

(15) *Any corporate officer who is an affiliated person of a person who is delinquent in paying a stop-work order and penalty assessment order issued pursuant to s. 440.107, or owed pursuant to a court order, is ineligible for an election of exemption. The stop-work order and penalty assessment shall be in effect against any such affiliated person. As used in this subsection, the term "affiliated person" means:*

- (a) *The spouse of such other person;*
- (b) *Any person who directly or indirectly owns or controls, or holds with the power to vote, 10 percent or more of the outstanding voting securities of such other person;*
- (c) *Any person who directly or indirectly owns 10 percent or more of the outstanding voting securities that are directly or indirectly owned, controlled, or held with the power to vote by such other person;*
- (d) *Any person or group of persons who directly or indirectly control, are controlled by, or are under common control with such other person;*
- (e) *Any person who directly or indirectly acquires all or substantially all of the other assets of such other person;*
- (f) *Any officer, director, trustee, partner, owner, manager, joint venturer, or employee of such other person or a person performing duties similar to persons in such positions; or*
- (g) *Any person who has an officer, director, trustee, partner, or joint venturer in common with such person.*

Section 4. Section 440.06, Florida Statutes, is amended to read:

440.06 Failure to secure compensation; effect.—Every employer who fails to secure the payment of compensation, *as provided in s. 440.10, by failing to meet the requirements of under this chapter as provided in s. 440.38* may not, in any suit brought against him or her by an employee subject to this chapter to recover damages for injury or death, defend such a suit on the grounds that the injury was caused by the negligence of a fellow servant, that the employee assumed the risk of his or her employment, or that the injury was due to the comparative negligence of the employee.

Section 5. Effective January 1, 2004, section 440.077, Florida Statutes, is amended to read:

440.077 When a ~~corporate sole proprietor, partner, or officer~~ rejects chapter, effect.—~~An A sole proprietor, partner, or officer of a corporation who is permitted to elect an exemption under this chapter actively engaged in the construction industry~~ and who elects to be exempt from the provisions of this chapter may not recover benefits under this chapter.

Section 6. Subsection (4) of section 440.09, Florida Statutes, is amended and paragraph (e) is added to subsection (7) of that section, to read:

440.09 Coverage.—

(4)(a) An employee shall not be entitled to compensation or benefits under this chapter if any judge of compensation claims, administrative law judge, court, or jury convened in this state determines that the employee has knowingly or intentionally engaged in any of the acts described in s. 440.105 *or any criminal act* for the purpose of securing workers' compensation benefits. *For purposes of this section, the term "intentional" shall include, but is not limited to, pleas of guilty or nolo contendere in criminal matters. This section shall apply to accidents, regardless of the date of the accident. For injuries occurring prior to January 1, 1994, this section shall pertain to the acts of the employee described in s. 440.105 or criminal activities occurring subsequent to January 1, 1994.*

(b) A judge of compensation claims, administrative law judge, or court of this state shall take judicial notice of a finding of insurance fraud by a court of competent jurisdiction and terminate or otherwise disallow benefits.

(c) Upon the denial of benefits in accordance with this section, a judge of compensation claims shall have the jurisdiction to order any benefits payable to the employee to be paid into the court registry or an escrow account during the pendency of an appeal or until such time as the time in which to file an appeal has expired.

(7)

(e) As a part of rebutting any presumptions under paragraph (b), the injured worker must prove the actual quantitative amounts of the drug or its metabolites as measured on the initial and confirmation post-accident drug tests of the injured worker's urine sample and provide

additional evidence regarding the absence of drug influence other than the worker's denial of being under the influence of a drug. No drug test conducted on a urine sample shall be rejected as to its results or the presumption imposed under paragraph (b) on the basis of the urine being bodily fluid tested.

Section 7. Effective January 1, 2004, subsection (1) of section 440.10, Florida Statutes, is amended to read:

440.10 Liability for compensation.—

(1)(a) Every employer coming within the provisions of this chapter, ~~including any brought within the chapter by waiver of exclusion or of exemption,~~ shall be liable for, and shall secure, the payment to his or her employees, or any physician, surgeon, or pharmacist providing services under the provisions of s. 440.13, of the compensation payable under ss. 440.13, 440.15, and 440.16. Any contractor or subcontractor who engages in any public or private construction in the state shall secure and maintain compensation for his or her employees under this chapter as provided in s. 440.38.

(b) In case a contractor sublets any part or parts of his or her contract work to a subcontractor or subcontractors, all of the employees of such contractor and subcontractor or subcontractors engaged on such contract work shall be deemed to be employed in one and the same business or establishment, and the contractor shall be liable for, and shall secure, the payment of compensation to all such employees, except to employees of a subcontractor who has secured such payment.

(c) A contractor ~~shall may~~ require a subcontractor to provide evidence of workers' compensation insurance ~~or a copy of his or her certificate of election.~~ A subcontractor ~~who is a corporation and has an officer who elects electing to be exempt as permitted under this chapter a sole proprietor, partner, or officer of a corporation~~ shall provide a copy of his or her certificate of ~~exemption election~~ to the contractor.

(d)1. If a contractor becomes liable for the payment of compensation to the employees of a subcontractor who has failed to secure such payment in violation of s. 440.38, the contractor or other third-party payor shall be entitled to recover from the subcontractor all benefits paid or payable plus interest unless the contractor and subcontractor have agreed in writing that the contractor will provide coverage.

2. If a contractor or third-party payor becomes liable for the payment of compensation to the ~~corporate officer employee~~ of a subcontractor who is actively engaged in the construction industry and has elected to be exempt from the provisions of this chapter, but whose election is invalid, the contractor or third-party payor may recover from the claimant, ~~partnership,~~ or corporation all benefits paid or payable plus interest, unless the contractor and the subcontractor have agreed in writing that the contractor will provide coverage.

(e) A subcontractor is not liable for the payment of compensation to the employees of another subcontractor on such contract work and is not protected by the exclusiveness-of-liability provisions of s. 440.11 from action at law or in admiralty on account of injury of such employee of another subcontractor.

(f) If an employer fails to secure compensation as required by this chapter, the department ~~shall may~~ assess against the employer a penalty not to exceed \$5,000 for each employee of that employer who is classified by the employer as an independent contractor but who is found by the department to not meet the criteria for an independent contractor that are set forth in s. 440.02. The division shall adopt rules to administer the provisions of this paragraph.

(g) Subject to s. 440.38, any employer who has employees engaged in work in this state shall obtain a Florida policy or endorsement for such employees which utilizes Florida class codes, rates, rules, and manuals that are in compliance with and approved under the provisions of this chapter and the Florida Insurance Code. Failure to comply with this paragraph is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The department shall adopt rules for construction industry and nonconstruction-industry employers with regard to the activities that define what constitutes being "engaged in work" in this state, using the following standards:

1. For employees of nonconstruction-industry employers who have their headquarters outside of Florida and also operate in Florida and

who are routinely crossing state lines, but usually return to their homes each night, the employee shall be assigned to the headquarters' state. However, the construction industry employees performing new construction or alterations in Florida shall be assigned to Florida even if the employees return to their home state each night.

2. *The payroll of executive supervisors who may visit a Florida location but who are not in direct charge of a Florida location shall be assigned to the state in which the headquarters is located.*

3. *For construction contractors who maintain a permanent staff of employees and superintendents, if any of these employees or superintendents are assigned to a job that is located in Florida, either for the duration of the job or any portion thereof, their payroll shall be assigned to Florida rather than headquarters' state.*

4. *Employees who are hired for a specific project in Florida shall be assigned to Florida. For purposes of this section, a person is conclusively presumed to be an independent contractor if:*

1.—~~The independent contractor provides the general contractor with an affidavit stating that he or she meets all the requirements of s. 440.02; and~~

2.—~~The independent contractor provides the general contractor with a valid certificate of workers' compensation insurance or a valid certificate of exemption issued by the department.~~

~~A sole proprietor, partner, or officer of a corporation who elects exemption from this chapter by filing a certificate of election under s. 440.05 may not recover benefits or compensation under this chapter. An independent contractor who provides the general contractor with both an affidavit stating that he or she meets the requirements of s. 440.02 and a certificate of exemption is not an employee under s. 440.02 and may not recover benefits under this chapter. For purposes of determining the appropriate premium for workers' compensation coverage, carriers may not consider any person who meets the requirements of this paragraph to be an employee.~~

Section 8. Section 440.1025, Florida Statutes, is amended to read:

440.1025 ~~Consideration of public~~ Employer workplace safety program in rate-setting; program requirements; rulemaking.—

(1) For a public or private employer to be eligible for receipt of specific identifiable consideration under s. 627.0915 for a workplace safety program in the setting of rates, the ~~public~~ employer must have a workplace safety program. At a minimum, the program must include a written safety policy and safety rules, and make provision for safety inspections, preventative maintenance, safety training, first-aid, accident investigation, and necessary recordkeeping. ~~For purposes of this section, "public employer" means any agency within state, county, or municipal government employing individuals for salary, wages, or other remuneration. The division may adopt promulgate rules for insurers to utilize in determining public employer compliance with the requirements of this section.~~

(2) *The division shall publicize on the Internet, and shall encourage insurers to publicize, the availability of free safety consultation services and safety program resources.*

Section 9. Section 440.103, Florida Statutes, is amended to read:

440.103 Building permits; identification of minimum premium policy.—~~Except as otherwise provided in this chapter,~~ Every employer shall, as a condition to *applying for and* receiving a building permit, show proof and certify to the permit issuer that it has secured compensation for its employees under this chapter as provided in ss. 440.10 and 440.38. Such proof of compensation must be evidenced by a certificate of coverage issued by the carrier, a valid exemption certificate approved by the department ~~or the former Division of Workers' Compensation of the Department of Labor and Employment Security,~~ or a copy of the employer's authority to self-insure and shall be presented each time the employer applies for a building permit. As provided in s. 627.413(5), each certificate of coverage must show, on its face, whether or not coverage is secured under the minimum premium provisions of rules adopted by rating organizations licensed by the department. The words "minimum premium policy" or equivalent language shall be typed, printed, stamped, or legibly handwritten.

Section 10. Section 440.105, Florida Statutes, is amended to read:

440.105 Prohibited activities; reports; penalties; limitations.—

(1)(a) Any insurance carrier, any individual self-insured, any commercial or group self-insurance fund, any professional practitioner licensed or regulated by the Department of ~~Health Business and Professional Regulation~~, except as otherwise provided by law, any medical review committee as defined in s. 766.101, any private medical review committee, and any insurer, agent, or other person licensed under the insurance code, or any employee thereof, having knowledge or who believes that a fraudulent act or any other act or practice which, upon conviction, constitutes a felony or misdemeanor under this chapter is being or has been committed shall send to the Division of Insurance Fraud, Bureau of Workers' Compensation Fraud, a report or information pertinent to such knowledge or belief and such additional information relative thereto as the bureau may require. The bureau shall review such information or reports and select such information or reports as, in its judgment, may require further investigation. It shall then cause an independent examination of the facts surrounding such information or report to be made to determine the extent, if any, to which a fraudulent act or any other act or practice which, upon conviction, constitutes a felony or a misdemeanor under this chapter is being committed. The bureau shall report any alleged violations of law which its investigations disclose to the appropriate licensing agency and state attorney or other prosecuting agency having jurisdiction with respect to any such violations of this chapter. If prosecution by the state attorney or other prosecuting agency having jurisdiction with respect to such violation is not begun within 60 days of the bureau's report, the state attorney or other prosecuting agency having jurisdiction with respect to such violation shall inform the bureau of the reasons for the lack of prosecution.

(b) In the absence of fraud or bad faith, a person is not subject to civil liability for libel, slander, or any other relevant tort by virtue of filing reports, without malice, or furnishing other information, without malice, required by this section or required by the bureau, and no civil cause of action of any nature shall arise against such person:

1. For any information relating to suspected fraudulent acts furnished to or received from law enforcement officials, their agents, or employees;

2. For any information relating to suspected fraudulent acts furnished to or received from other persons subject to the provisions of this chapter; or

3. For any such information relating to suspected fraudulent acts furnished in reports to the bureau, or the National Association of Insurance Commissioners.

(2) Whoever violates any provision of this subsection commits a misdemeanor of the ~~first second~~ degree, punishable as provided in s. 775.082 or s. 775.083.

(a) It shall be unlawful for any employer to knowingly:

1. Coerce or attempt to coerce, as a precondition to employment or otherwise, an employee to obtain a certificate of election of exemption pursuant to s. 440.05.

2. Discharge or refuse to hire an employee or job applicant because the employee or applicant has filed a claim for benefits under this chapter.

3. Discharge, discipline, or take any other adverse personnel action against any employee for disclosing information to the department or any law enforcement agency relating to any violation or suspected violation of any of the provisions of this chapter or rules promulgated hereunder.

4. Violate a stop-work order issued by the department pursuant to s. 440.107.

(b) It shall be unlawful for any insurance entity to revoke or cancel a workers' compensation insurance policy or membership because an employer has returned an employee to work or hired an employee who has filed a workers' compensation claim.

(3) Whoever violates any provision of this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(a) It shall be unlawful for any employer to knowingly fail to update applications for coverage as required by s. 440.381(1) and department of insurance rules *within 7 days after the reporting date for any change in the required information*, or to post notice of coverage pursuant to s. 440.40.

(b) It is unlawful for any attorney or other person, in his or her individual capacity or in his or her capacity as a public or private employee, or for any firm, corporation, partnership, or association to receive any fee or other consideration or any gratuity from a person on account of services rendered for a person in connection with any proceedings arising under this chapter, unless such fee, consideration, or gratuity is approved by a judge of compensation claims or by the Deputy Chief Judge of Compensation Claims.

(4) Whoever violates any provision of this subsection commits insurance fraud, punishable as provided in paragraph (f).

(a) It shall be unlawful for any employer to knowingly:

1. Present or cause to be presented any false, fraudulent, or misleading oral or written statement to any person as evidence of compliance with s. 440.38.

2. Make a deduction from the pay of any employee entitled to the benefits of this chapter for the purpose of requiring the employee to pay any portion of premium paid by the employer to a carrier or to contribute to a benefit fund or department maintained by such employer for the purpose of providing compensation or medical services and supplies as required by this chapter.

3. Fail to secure payment of compensation if required to do so by this chapter.

(b) It shall be unlawful for any person:

1. To knowingly make, or cause to be made, any false, fraudulent, or misleading oral or written statement for the purpose of obtaining or denying any benefit or payment under this chapter.

2. To present or cause to be presented any written or oral statement as part of, or in support of, a claim for payment or other benefit pursuant to any provision of this chapter, knowing that such statement contains any false, incomplete, or misleading information concerning any fact or thing material to such claim.

3. To prepare or cause to be prepared any written or oral statement that is intended to be presented to any employer, insurance company, or self-insured program in connection with, or in support of, any claim for payment or other benefit pursuant to any provision of this chapter, knowing that such statement contains any false, incomplete, or misleading information concerning any fact or thing material to such claim.

4. To knowingly assist, conspire with, or urge any person to engage in activity prohibited by this section.

5. To knowingly make any false, fraudulent, or misleading oral or written statement, or to knowingly omit or conceal material information, required by s. 440.185 or s. 440.381, for the purpose of obtaining workers' compensation coverage or for the purpose of avoiding, delaying, or diminishing the amount of payment of any workers' compensation premiums.

6. To knowingly misrepresent or conceal payroll, classification of workers, or information regarding an employer's loss history which would be material to the computation and application of an experience rating modification factor for the purpose of avoiding or diminishing the amount of payment of any workers' compensation premiums.

7. To knowingly present or cause to be presented any false, fraudulent, or misleading oral or written statement to any person as evidence of compliance with s. 440.38, as evidence of eligibility for a certificate of exemption under s. 440.05.

8. To knowingly violate a stop-work order issued by the department pursuant to s. 440.107.

9. To knowingly present or cause to be presented any false, fraudulent, or misleading oral or written statement to any person as evidence

of identity for the purpose of obtaining employment or filing or supporting a claim for workers' compensation benefits.

(c) It shall be unlawful for any physician licensed under chapter 458, osteopathic physician licensed under chapter 459, chiropractic physician licensed under chapter 460, podiatric physician licensed under chapter 461, optometric physician licensed under chapter 463, or any other practitioner licensed under the laws of this state to knowingly and willfully assist, conspire with, or urge any person to fraudulently violate any of the provisions of this chapter.

(d) It shall be unlawful for any person or governmental entity licensed under chapter 395 to maintain or operate a hospital in such a manner so that such person or governmental entity knowingly and willfully allows the use of the facilities of such hospital by any person, in a scheme or conspiracy to fraudulently violate any of the provisions of this chapter.

(e) It shall be unlawful for any attorney or other person, in his or her individual capacity or in his or her capacity as a public or private employee, or any firm, corporation, partnership, or association, to knowingly assist, conspire with, or urge any person to fraudulently violate any of the provisions of this chapter.

(f) If the ~~monetary value amount of any claim or workers' compensation insurance premium involved in~~ any violation of this subsection:

1. Is less than \$20,000, the offender commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. Is \$20,000 or more, but less than \$100,000, the offender commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Is \$100,000 or more, the offender commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) It shall be unlawful for any attorney or other person, in his or her individual capacity or in his or her capacity as a public or private employee or for any firm, corporation, partnership, or association, to unlawfully solicit any business in and about city or county hospitals, courts, or any public institution or public place; in and about private hospitals or sanitariums; in and about any private institution; or upon private property of any character whatsoever for the purpose of making workers' compensation claims. Whoever violates any provision of this subsection commits a felony of the ~~second~~ ^{third} degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.085.

(6) This section shall not be construed to preclude the applicability of any other provision of criminal law that applies or may apply to any transaction.

~~(7) For the purpose of the section, the term "statement" includes, but is not limited to, any notice, representation, statement, proof of injury, bill for services, diagnosis, prescription, hospital or doctor records, X ray, test result, or other evidence of loss, injury, or expense.~~

~~(7)(8) An injured employee or any other party making a claim under this chapter shall provide his or her personal signature attesting that he or she has reviewed, understands, and acknowledges All claim forms as provided for in this chapter shall contain a notice that clearly states in substance the following statement: "Any person who, knowingly and with intent to injure, defraud, or deceive any employer or employee, insurance company, or self-insured program, files a statement of claim containing any false or misleading information commits insurance fraud, punishable as provided in s. 817.234." If the injured employee or other party refuses to sign the document attesting Each claimant shall personally sign the claim form and attest that he or she has reviewed, understands, and acknowledges the statement, benefits or payments under this chapter shall be suspended until such signature is obtained foregoing notice.~~

Section 11. Subsection (3) of section 440.1051, Florida Statutes, is amended to read:

440.1051 Fraud reports; civil immunity; criminal penalties.—

(2) Any person who reports workers' compensation fraud to the division under subsection (1) is immune from civil liability for doing so, and

the person or entity alleged to have committed the fraud may not retaliate against him or her for providing such report, unless the person making the report knows it to be false.

(3) A person who calls and, knowingly and falsely, reports workers' compensation fraud or who, in violation of subsection (2) retaliates against a person for making such report, ~~commits a felony misdemeanor of the third first degree, punishable as provided in s. 775.082, or s. 775.083, or s. 775.084 both.~~

Section 12. Section 440.107, Florida Statutes, is amended to read:

440.107 Department powers to enforce employer compliance with coverage requirements.—

(1) The Legislature finds that the failure of an employer to comply with the workers' compensation coverage requirements under this chapter poses an immediate danger to public health, safety, and welfare. The Legislature authorizes the department to secure employer compliance with the workers' compensation coverage requirements and authorizes the department to conduct investigations for the purpose of ensuring employer compliance.

(2) *For the purposes of this section, "securing the payment of workers' compensation" means obtaining coverage that meets the requirements of this chapter and the Florida Insurance Code. However, if at any time an employer materially understates or conceals payroll, materially misrepresents or conceals employee duties so as to avoid proper classification for premium calculations, or materially misrepresents or conceals information pertinent to the computation and application of an experience rating modification factor, such employer shall be deemed to have failed to secure payment of workers' compensation and shall be subject to the sanctions set forth in this section. A stop-work order issued because an employer is deemed to have failed to secure the payment of workers' compensation required under this chapter because the employer has materially understated or concealed payroll, materially misrepresented or concealed employee duties so as to avoid proper classification for premium calculations, or materially misrepresented or concealed information pertinent to the computation and application of an experience rating modification factor shall have no effect upon an employer's or carrier's duty to provide benefits under this chapter or upon any of the employer's or carrier's rights and defenses under this chapter, including exclusive remedy. The department and its authorized representatives may enter and inspect any place of business at any reasonable time for the limited purpose of investigating compliance with workers' compensation coverage requirements under this chapter. Each employer shall keep true and accurate business records that contain such information as the department prescribes by rule. The business records must contain information necessary for the department to determine compliance with workers' compensation coverage requirements and must be maintained within this state by the business, in such a manner as to be accessible within a reasonable time upon request by the department. The business records must be open to inspection and be available for copying by the department at any reasonable time and place and as often as necessary. The department may require from any employer any sworn or unsworn reports, pertaining to persons employed by that employer, deemed necessary for the effective administration of the workers' compensation coverage requirements.*

(3) *The department shall enforce workers' compensation coverage requirements, including the requirement that the employer secure the payment of workers' compensation, and the requirement that the employer provide the carrier with information to accurately determine payroll and correctly assign classification codes. In addition to any other powers under this chapter, the department shall have the power to:*

- (a) *Conduct investigations for the purpose of ensuring employer compliance.*
- (b) *Enter and inspect any place of business at any reasonable time for the purpose of investigating employer compliance.*
- (c) *Examine and copy business records.*
- (d) *Administer oaths and affirmations.*
- (e) *Certify to official acts.*

(f) *Issue and serve subpoenas for attendance of witnesses or production of business records, books, papers, correspondence, memoranda, and other records.*

(g) *Issue stop-work orders, penalty assessment orders, and any other orders necessary for the administration of this section.*

(h) *Enforce the terms of a stop-work order.*

(i) *Levy and pursue actions to recover penalties.*

(j) *Seek injunctions and other appropriate relief. In discharging its duties, the department may administer oaths and affirmations, certify to official acts, issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary by the department as evidence in order to ensure proper compliance with the coverage provisions of this chapter.*

(4) *The department shall designate representatives who may serve subpoenas and other process of the department issued under this section.*

(5) *The department shall specify by rule the business records that employers must maintain and produce to comply with this section.*

(6)(4) If a person has refused to obey a subpoena to appear before the department or its authorized representative or and produce evidence requested by the department or to give testimony about the matter that is under investigation, a court has jurisdiction to issue an order requiring compliance with the subpoena if the court has jurisdiction in the geographical area where the inquiry is being carried on or in the area where the person who has refused the subpoena is found, resides, or transacts business. Failure to obey such a court order may be punished by the court as contempt, either civilly or criminally. Costs, including reasonable attorney's fees, incurred by the department to obtain an order granting, in whole or in part, a petition to enforce a subpoena or a subpoena duces tecum shall be taxed against the subpoenaed party.

(7)(a)(5) Whenever the department determines that an employer who is required to secure the payment to his or her employees of the compensation provided for by this chapter has failed to secure the payment of workers' compensation required by this chapter or to produce the required business records under subsection (5) within 5 business days after receipt of the written request of the department ~~do so~~, such failure shall be deemed an immediate serious danger to public health, safety, or welfare sufficient to justify service by the department of a stop-work order on the employer, requiring the cessation of all business operations at the place of employment or job site. If the department division makes such a determination, the department division shall issue a stop-work order within 72 hours. The order shall take effect *when served* upon the date of service upon the employer or, for a particular employer work site, *when served at that work site, unless the employer provides evidence satisfactory to the department of having secured any necessary insurance or self insurance and pays a civil penalty to the department, to be deposited by the department into the Workers' Compensation Administration Trust Fund, in the amount of \$100 per day for each day the employer was not in compliance with this chapter. In addition to serving a stop-work order at a particular work site which shall be effective immediately, the department shall immediately proceed with service upon the employer which shall be effective upon all employer work sites in the state for which the employer is not in compliance. A stop-work order may be served with regard to an employer's work site by posting a copy of the stop-work order in a conspicuous location at the work site. The order shall remain in effect until the department issues an order releasing the stop-work order upon a finding that the employer has come into compliance with the coverage requirements of this chapter and has paid any penalty assessed under this section. The department may require an employer who is found to have failed to comply with the coverage requirements of s. 440.38 to file with the department, as a condition of release from a stop-work order, periodic reports for a probationary period that shall not exceed 2 years that demonstrate the employer's continued compliance with this chapter. The department shall by rule specify the reports required and the time for filing under this subsection.*

(b) *Stop-work orders and penalty assessment orders issued under this section against a corporation, partnership, or sole proprietorship shall be in effect against any successor corporation or business entity that has one or more of the same principals or officers as the corporation or partnership against which the stop-work order was issued and are engaged in the same or equivalent trade or activity.*

(c) *The department shall assess a penalty of \$1,000 per day against an employer for each day that the employer conducts business operations that are in violation of a stop-work order.*

(d)1. *In addition to any penalty, stop-work order, or injunction, the department shall assess against any employer who has failed to secure the payment of compensation as required by this chapter a penalty equal to 1.5 times the amount the employer would have paid in premium when applying approved manual rates to the employer's payroll during periods for which it failed to secure the payment of workers' compensation required by this chapter within the preceding 3-year period or \$1,000, whichever is greater.*

2. *Any subsequent violation within 5 years after the most recent violation shall, in addition to the penalties set forth in this subsection, be deemed a knowing act within the meaning of s. 440.105.*

(e) *When an employer fails to provide business records sufficient to enable the department to determine the employer's payroll for the period requested for the calculation of the penalty provided in paragraph (d), for penalty calculation purposes, the imputed weekly payroll for each employee, corporate officer, sole proprietor, or partner shall be the statewide average weekly wage as defined in s. 440.12(2) multiplied by 1.5.*

(f) *In addition to any other penalties provided for in this chapter, the department may assess against the employer a penalty of \$5,000 for each employee of that employer who the employer represents to the department or carrier as an independent contractor but who is determined by the department not to be an independent contractor as defined in s. 440.02.*

(8)(6) *In addition to the issuance of a stop-work order under subsection (7), the department may file a complaint in the circuit court in and for Leon County to enjoin any employer, who has failed to secure the payment of workers' compensation as required by this chapter, from employing individuals and from conducting business until the employer presents evidence satisfactory to the department of having secured the payment of workers' compensation required by this chapter and pays a civil penalty assessed by the department under this section, to be deposited by the department into the Workers' Compensation Administration Trust Fund, in the amount of \$100 per day for each day the employer was not in compliance with this chapter.*

(9)(7) *In addition to any penalty, stop-work order, or injunction, the department shall assess against any employer, who has failed to secure the payment of compensation as required by this chapter, a penalty in the following amount:*

(a) *An amount equal to at least the amount that the employer would have paid or up to twice the amount the employer would have paid during periods it illegally failed to secure payment of compensation in the preceding 3-year period based on the employer's payroll during the preceding 3-year period; or*

(b) *One thousand dollars, whichever is greater. Any penalty assessed under this subsection is due within 30 days after the date on which the employer is notified, except that, if the department has posted a stop-work order or obtained injunctive relief against the employer, payment is due, in addition to those conditions set forth in this section, as a condition to relief from a stop-work order or an injunction. Interest shall accrue on amounts not paid when due at the rate of 1 percent per month. The department division shall adopt rules to administer this section.*

(10)(8) *The department may bring an action in circuit court to recover penalties assessed under this section, including any interest owed to the department pursuant to this section. In any action brought by the department pursuant to this section in which it prevails, the circuit court shall award costs, including the reasonable costs of investigation and a reasonable attorney's fee.*

(11)(9) *Any judgment obtained by the department and any penalty due pursuant to the service of a stop-work order or otherwise due under this section shall, until collected, constitute a lien upon the entire interest of the employer, legal or equitable, in any property, real or personal, tangible or intangible; however, such lien is subordinate to claims for unpaid wages and any prior recorded liens, and a lien created by this section is not valid against any person who, subsequent to such lien and in good faith and for value, purchases real or personal property from such employer or becomes the mortgagee on real or personal property of such employer, or against a subsequent attaching creditor, unless, with*

respect to real estate of the employer, a notice of the lien is recorded in the public records of the county where the real estate is located, and with respect to personal property of the employer, the notice is recorded with the Secretary of State.

(12)(10) *Any law enforcement agency in the state may, at the request of the department, render any assistance necessary to carry out the provisions of this section, including, but not limited to, preventing any employee or other person from remaining at a place of employment or job site after a stop-work order or injunction has taken effect.*

(13)(11) *Agency action Actions by the department under this section, if contested, must be contested as provided in chapter 120. All civil penalties assessed by the department must be paid into the Workers' Compensation Administration Trust Fund. The department shall return any sums previously paid, upon conclusion of an action, if the department fails to prevail and if so directed by an order of court or an administrative hearing officer. The requirements of this subsection may be met by posting a bond in an amount equal to twice the penalty and in a form approved by the department.*

(14)(12) *If the department division finds that an employer who is certified or registered under part I or part II of chapter 489 and who is required to secure the payment of workers' compensation under provided for by this chapter to his or her employees has failed to do so, the department division shall immediately notify the Department of Business and Professional Regulation.*

Section 13. Subsection (1) of section 440.15, Florida Statutes, is amended to read:

440.15 Compensation for disability.—Compensation for disability shall be paid to the employee, subject to the limits provided in s. 440.12(2), as follows:

(1) PERMANENT TOTAL DISABILITY.—

(a) *In case of total disability adjudged to be permanent, 66 2/3 percent of the average weekly wages shall be paid to the employee during the continuance of such total disability.*

(b) *Only A catastrophic injury as defined in s. 440.02(38) shall, in the absence of conclusive proof of a substantial earning capacity, constitute permanent total disability. In all other cases, no compensation shall be payable under paragraph (a) if the employee is engaged in, or is physically capable of engaging in at least sedentary employment. In order to obtain permanent total disability benefits, the employee must establish that he or she is not able uninterruptedly to engage in at least sedentary employment, within a 50-mile radius of the employee's residence, due to his or her physical limitation. Only claimants with catastrophic injuries or claimants who are incapable of engaging in employment, as described in this paragraph, are eligible for permanent total benefits. In no other case may permanent total disability be awarded.*

(c) *In cases of permanent total disability resulting from injuries that occurred prior to July 1, 1955, such payments shall not be made in excess of 700 weeks.*

(d) *If an employee who is being paid compensation for permanent total disability becomes rehabilitated to the extent that she or he establishes an earning capacity, the employee shall be paid, instead of the compensation provided in paragraph (a), benefits pursuant to subsection (3). The department shall adopt rules to enable a permanently and totally disabled employee who may have reestablished an earning capacity to undertake a trial period of reemployment without prejudicing her or his return to permanent total status in the case that such employee is unable to sustain an earning capacity.*

(e)1. *The employer's or carrier's right to conduct vocational evaluations or testing by the employer's or carrier's chosen rehabilitation advisor or provider pursuant to s. 440.491 continues even after the employee has been accepted or adjudicated as entitled to compensation under this chapter and costs for such evaluations and testing shall be borne by the employer or carrier, respectively. This right includes, but is not limited to, instances in which such evaluations or tests are recommended by a treating physician or independent medical-examination physician, instances warranted by a change in the employee's medical condition, or instances in which the employee appears to be making appropriate prog-*

ress in recuperation. This right may not be exercised more than once every calendar year.

2. The carrier must confirm the scheduling of the vocational evaluation or testing in writing, and must notify *the employee and the employee's counsel*, if any, at least 7 days before the date on which vocational evaluation or testing is scheduled to occur.

3. ~~Pursuant to an order of the judge of compensation claims,~~ The employer or carrier may withhold payment of benefits for permanent total disability or supplements for any period during which the employee willfully fails or refuses to appear without good cause for the scheduled vocational evaluation or testing.

(f)1. If permanent total disability results from injuries that occurred subsequent to June 30, 1955, and for which the liability of the employer for compensation has not been discharged under s. 440.20(11), the injured employee shall receive additional weekly compensation benefits equal to 5 percent of her or his weekly compensation rate, as established pursuant to the law in effect on the date of her or his injury, multiplied by the number of calendar years since the date of injury. The weekly compensation payable and the additional benefits payable under this paragraph, when combined, may not exceed the maximum weekly compensation rate in effect at the time of payment as determined pursuant to s. 440.12(2). Entitlement to these supplemental payments shall cease at age 62 if the employee is eligible for social security benefits under 42 U.S.C. ss. 402 and 423, whether or not the employee has applied for such benefits. These supplemental benefits shall be paid by the department out of the Workers' Compensation Administration Trust Fund when the injury occurred subsequent to June 30, 1955, and before July 1, 1984. These supplemental benefits shall be paid by the employer when the injury occurred on or after July 1, 1984. Supplemental benefits are not payable for any period prior to October 1, 1974.

2.a. The department shall provide by rule for the periodic reporting to the department of all earnings of any nature and social security income by the injured employee entitled to or claiming additional compensation under subparagraph 1. Neither the department nor the employer or carrier shall make any payment of those additional benefits provided by subparagraph 1. for any period during which the employee willfully fails or refuses to report upon request by the department in the manner prescribed by such rules.

b. The department shall provide by rule for the periodic reporting to the employer or carrier of all earnings of any nature and social security income by the injured employee entitled to or claiming benefits for permanent total disability. The employer or carrier is not required to make any payment of benefits for permanent total disability for any period during which the employee willfully fails or refuses to report upon request by the employer or carrier in the manner prescribed by such rules or if any employee who is receiving permanent total disability benefits refuses to apply for or cooperate with the employer or carrier in applying for social security benefits.

3. When an injured employee receives a full or partial lump-sum advance of the employee's permanent total disability compensation benefits, the employee's benefits under this paragraph shall be computed on the employee's weekly compensation rate as reduced by the lump-sum advance.

Section 14. Subsection (9) of section 440.185, Florida Statutes, is amended, and subsection (12) is added to that section, to read:

440.185 Notice of injury or death; reports; penalties for violations.—

(9) Any employer or carrier who fails or refuses to timely send any form, report, or notice required by this section shall be subject to an ~~administrative fine by the department a civil penalty~~ not to exceed \$1,000 ~~\$500~~ for each such failure or refusal. ~~If, within 1 calendar year, an employer fails to timely submit to the carrier more than 10 percent of its notices of injury or death, the employer shall be subject to an administrative fine by the department not to exceed \$2,000 for each such failure or refusal.~~ However, any employer who fails to notify the carrier of the injury on the prescribed form or by letter within the 7 days required in subsection (2) shall be liable for the ~~administrative fine civil penalty~~, which shall be paid by the employer and not the carrier. Failure by the employer to meet its obligations under subsection (2) shall not relieve the carrier from liability for the ~~administrative fine civil penalty~~ if it fails to comply with subsections (4) and (5).

(12) Upon receiving notice of an injury from an employee under subsection (1), the employer or carrier shall provide the employee with a written notice, in the form and manner determined by the department by rule, of the availability of services from the Employee Assistance and Ombudsman Office. The substance of the notice to the employee shall include:

(a) A description of the scope of services provided by the office.

(b) A listing of the toll-free telephone number of, the email address, and the postal address of the office.

(c) A statement that the informational brochure referred to in subsection (4) will be mailed to the employee within 3 days after the carrier receives notice of the injury.

(d) Any other information regarding access to assistance that the department finds is immediately necessary for an injured employee.

Section 15. Subsections (2), (3), (4), (6), and (8) of section 440.20, Florida Statutes, are amended to read:

440.20 Time for payment of compensation and medical bills; penalties for late payment.—

(2)(a) The carrier must pay the first installment of compensation for total disability or death benefits or deny compensability no later than the 14th calendar day after the employer receives notification ~~notice~~ of the injury or death, when disability is immediate and continuous for 8 calendar days or more after the injury. If the first 7 days after disability are nonconsecutive or delayed, the first installment of compensation is due on the 6th day after the first 8 calendar days of disability. The carrier shall thereafter pay compensation in biweekly installments or as otherwise provided in s. 440.15, unless the judge of compensation claims determines or the parties agree that an alternate installment schedule is in the best interests of the employee.

(b) The carrier must pay, disallow, or deny all medical, dental, pharmacy, and hospital bills submitted to the carrier in accordance with department rule no later than 45 calendar days after the carrier's receipt of the bill.

(3) Upon making initial payment of indemnity benefits, or upon suspension or cessation of payment for any reason, the carrier shall immediately notify the *injured employee, the employer, and the department* that it has commenced, suspended, or ceased payment of compensation. The department may require such notification to the *injured employee, employer, and the department in a any format and manner* it deems necessary to obtain accurate and timely notification ~~reporting~~.

(4) If the carrier is uncertain of its obligation to provide all benefits or compensation, ~~it may initiate payment without prejudice and without admitting liability.~~ the carrier shall immediately and in good faith commence investigation of the employee's entitlement to benefits under this chapter and shall admit or deny compensability within 120 days after the initial provision of compensation or benefits as required under subsection (2) or s. 440.192(8). *Additionally, the carrier shall initiate payment and continue the provision of all benefits and compensation as if the claim had been accepted as compensable, without prejudice and without admitting liability.* Upon commencement of payment as required under subsection (2) or s. 440.192 (8), the carrier shall provide written notice to the employee that it has elected to pay ~~all or part of~~ the claim pending further investigation, and that it will advise the employee of claim acceptance or denial within 120 days. A carrier that fails to deny compensability within 120 days after the initial provision of benefits or payment of compensation as required under subsection (2) or s. 440.192(8) waives the right to deny compensability, unless the carrier can establish material facts relevant to the issue of compensability that it could not have discovered through reasonable investigation within the 120-day period. The initial provision of compensation or benefits, for purposes of this subsection, means the first installment of compensation or benefits to be paid by the carrier under subsection (2) or pursuant to a petition for benefits under s. 440.192(8).

(6)(a) If any installment of compensation for death or dependency benefits, or compensation for disability benefits, ~~permanent impairment, or wage loss~~ payable without an award is not paid within 7 days after it becomes due, as provided in subsection (2), subsection (3), or subsection (4), there shall be added to such unpaid installment a ~~punitive~~

penalty of an amount equal to 20 percent of the unpaid installment ~~or \$5, which shall be paid at the same time as, but in addition to, such installment of compensation. This penalty shall not apply for late payments resulting, unless notice is filed under subsection (4) or unless such nonpayment results~~ from conditions over which the employer or carrier had no control. When any installment of compensation payable without an award has not been paid within 7 days after it became due and the claimant concludes the prosecution of the claim before a judge of compensation claims without having specifically claimed additional compensation in the nature of a penalty under this section, the claimant will be deemed to have acknowledged that, owing to conditions over which the employer or carrier had no control, such installment could not be paid within the period prescribed for payment and to have waived the right to claim such penalty. However, during the course of a hearing, the judge of compensation claims shall on her or his own motion raise the question of whether such penalty should be awarded or excused. The department may assess without a hearing the ~~punitive~~ penalty against either the employer or the ~~insurance~~ carrier, depending upon who was at fault in causing the delay. The insurance policy cannot provide that this sum will be paid by the carrier if the department or the judge of compensation claims determines that the ~~punitive~~ penalty should be paid ~~made~~ by the employer rather than the carrier. Any additional installment of compensation paid by the carrier pursuant to this section shall be paid directly to the employee by check or, if authorized by the employee, by direct deposit into the employee's account at a financial institution. ~~As used in this subsection, the term "financial institution" means a financial institution as defined in s. 655.005(1)(h).~~

(b) For medical services provided on or after January 1, 2004, the department shall require that all medical, hospital, pharmacy, or dental bills properly submitted by the provider, except for bills that are disallowed or denied by the carrier or its authorized vendor in accordance with department rule, are timely paid within 45 calendar days after the carrier's receipt of the bill. The department shall impose penalties for late payments or disallowances or denials of medical, hospital, pharmacy, or dental bills that are below a minimum 95 percent timely performance standard. The carrier shall pay to the Workers' Compensation Administration Trust Fund a penalty of:

1. Twenty-five dollars for each bill below the 95 percent timely performance standard, but meeting a 90 percent timely standard.

2. Fifty dollars for each bill below a 90 percent timely performance standard.

(8)(a) In addition to any other penalties provided by this chapter for late payment, if any installment of compensation is not paid when it becomes due, the employer, carrier, or servicing agent shall pay interest thereon at the rate of 12 percent per year from the date the installment becomes due until it is paid, whether such installment is payable without an order or under the terms of an order. The interest payment shall be the greater of the amount of interest due or \$5.

(a) ~~Within 30 days after final payment of compensation has been made, the employer, carrier, or servicing agent shall send to the department a notice, in accordance with a format and manner prescribed by the department, stating that such final payment has been made and stating the total amount of compensation paid, the name of the employee and of any other person to whom compensation has been paid, the date of the injury or death, and the date to which compensation has been paid.~~

(b) ~~If the employer, carrier, or servicing agent fails to so notify the department within such time, the department shall assess against such employer, carrier, or servicing agent a civil penalty in an amount not over \$100.~~

(b)(e) In order to ensure carrier compliance under this chapter and provisions of the Florida Insurance Code, the office department shall monitor, audit, and investigate the performance of carriers by conducting market conduct examinations, as provided in s. 624.3161, and conducting investigations, as provided in s. 624.317. The office department shall require establishment by rule minimum performance standards for carriers to ensure that a minimum of 90 percent of all compensation benefits are timely paid in accordance with this section. The office department shall impose penalties ~~fine a carrier as provided in s. 440.13(1)(b)~~ up to \$50 for each late payments payment of compensation that are below a the minimum 95 90 percent timely payment performance standard. The carrier shall pay to the Workers' Compensation Administration Trust Fund a penalty of:

1. Fifty dollars per number of installments of compensation below the 95 percent timely payment performance standard and equal to or greater than a 90 percent timely payment performance standard.

2. One hundred dollars per number of installments of compensation below a 90 percent timely payment performance standard.

This section does not affect the imposition of any penalties or interest due to the claimant. If a carrier contracts with a servicing agent to fulfill its administrative responsibilities under this chapter, the payment practices of the servicing agent are deemed the payment practices of the carrier for the purpose of assessing penalties against the carrier.

Section 16. Subsection (7) is added to section 440.38, Florida Statutes, to read:

440.38 Security for compensation; insurance carriers and self-insurers.—

(7) Any employer who meets the requirements of subsection (1) through a policy of insurance issued outside of this state must at all times, with respect to all employees working in this state, maintain the required coverage under a Florida endorsement using Florida rates and rules pursuant to payroll reporting that accurately reflects the work performed in this state by such employees.

Section 17. Subsections (2) and (6) of section 440.381, Florida Statutes, are amended to read:

440.381 Application for coverage; reporting payroll; payroll audit procedures; penalties.—

(2) Submission of an application that contains false, misleading, or incomplete information provided with the purpose of avoiding or reducing the amount of premiums for workers' compensation coverage is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The application must contain a statement that the filing of an application containing false, misleading, or incomplete information provided with the purpose of avoiding or reducing the amount of premiums for workers' compensation coverage is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The application must contain a sworn statement by the employer attesting to the accuracy of the information submitted and acknowledging the provisions of former s. 440.37(4). The application must contain a sworn statement by the agent attesting that the agent explained to the employer or officer the classification codes that are used for premium calculations.

(6)(a) If an employer understates or conceals payroll, or misrepresents or conceals employee duties so as to avoid proper classification for premium calculations, or misrepresents or conceals information pertinent to the computation and application of an experience rating modification factor, the employer, or the employer's agent or attorney, shall pay to the insurance carrier a penalty of 10 times the amount of the difference in premium paid and the amount the employer should have paid and reasonable attorney's fees. The penalty may be enforced in the circuit courts of this state.

(b) If the department determines that an employer has materially understated or concealed payroll, has materially misrepresented or concealed employee duties so as to avoid proper classification for premium calculations, or has materially misrepresented or concealed information pertinent to the computation and application of an experience rating modification factor, the department shall immediately notify the employer's carrier of such determination. The carrier shall commence a physical onsite audit of the employer within 30 days after receiving notification from the department. If the carrier fails to commence the audit as required by this section, the department shall contract with auditing professionals to conduct the audit at the carrier's expense. A copy of the carrier's audit of the employer shall be provided to the department upon completion. The carrier is not required to conduct the physical onsite audit of the employer as set forth in this paragraph if the carrier gives written notice of cancellation to the employer within 30 days after receiving notification from the department of the material misrepresentation, understatement, or concealment and an audit is conducted in conjunction with the cancellation.

Section 18. Subsection (3) of section 440.42, Florida Statutes, is amended to read:

440.42 Insurance policies; liability.—

(3) No contract or policy of insurance issued by a carrier under this chapter shall expire or be canceled until at least 30 days have elapsed after a notice of cancellation has been sent to the department and to the employer in accordance with the provisions of s. 440.185(7). *For cancellation due to nonpayment of premium, the insurer shall mail notification to the employer at least 10 days prior to the effective date of the cancellation.* However, when duplicate or dual coverage exists by reason of two different carriers having issued policies of insurance to the same employer securing the same liability, it shall be presumed that only that policy with the later effective date shall be in force and that the earlier policy terminated upon the effective date of the latter. In the event that both policies carry the same effective date, one of the policies may be canceled instantaneously upon filing a notice of cancellation with the department and serving a copy thereof upon the employer in such manner as the department prescribes by rule. The department may by rule prescribe the content of the notice of retroactive cancellation and specify the time, place, and manner in which the notice of cancellation is to be served.

Section 19. Section 440.525, Florida Statutes, is amended to read:

440.525 Examination and investigation of carriers and claims-handling entities.—

(1) The department may examine, or investigate any ~~each~~ carrier, third-party administrator, servicing agent, or other claims-handling entity as often as is warranted to ensure that it is ~~carriers are~~ fulfilling its obligations under this chapter ~~the law~~. ~~The examination may cover any period of the carrier's operations since the last previous examination.~~

(2) An examination may cover any period of the carrier's, third-party administrator's, servicing agent's, or other claims-handling entity's operations since the last previous examination. An investigation based upon a reasonable belief by the department that a material violation of this chapter has occurred may cover any time period, but may not predate the last examination by more than 5 years. The department may by rule establish procedures, standards, and protocols for examinations and investigations. If the department finds any violation of this chapter, it may impose administrative penalties pursuant to this chapter. If the department finds any self-insurer in violation of this chapter, it may take action pursuant s. 440.38(3). Examinations or investigations by the department may address, but are not limited to addressing, patterns or practices of unreasonable delay in claims handling; timeliness and accuracy of payments and reports under ss. 440.13, 440.16, and 440.185; or patterns or practices of harassment, coercion, or intimidation of claimants. The department may also specify by rule the documentation to be maintained for each claim file.

(3) As to any examination or investigation conducted under this chapter, the department shall have the power to conduct onsite inspections of claims records and documentation of a carrier, third-party administrator, servicing agent, or other claims-handling entity, and conduct interviews, both sworn and unsworn, of claims-handling personnel. Carriers, third-party administrators, servicing agents, and other claims-handling entities shall make all claims records, documentation, communication, and correspondence available to department personnel during regular business hours. If any person fails to comply with a request for production of records or documents or fails to produce an employee for interview, the department may compel production or attendance by subpoena. The results of an examination or investigation shall be provided to the carrier, third-party administrator, servicing agent, or other claims-handling entity in a written report setting forth the basis for any violations that are asserted. Such report is agency action for purposes of chapter 120, and the aggrieved party may request a proceeding under s. 120.57 with regard to the findings and conclusion of the report.

(4) If the department finds that violations of this chapter have occurred, the department may impose an administrative penalty upon the offending entity or entities. For each offending entity, such penalties shall not exceed \$2,500 for each pattern or practice constituting nonwillful violation and shall not exceed an aggregate amount of \$10,000 for all nonwillful violations arising out of the same action. If the department finds a pattern of practice that constitutes a willful violation, the department may impose an administrative penalty upon each offending entity not to exceed \$20,000 for each willful pattern or practice. Such fines shall

not exceed \$100,000 for all willful violations arising out of the same action. No penalty assessed under this section may be recouped by any carrier in the rate base, the premium, or any rate filing. Any administrative penalty imposed under this section for a nonwillful violation shall not duplicate an administrative penalty imposed under another provision of this chapter or the Insurance Code. The department may adopt rules to implement this section. The department shall adopt penalty guidelines by rule to set penalties under this chapter.

Section 20. Subsection (2) of section 627.162, Florida Statutes, is amended to read:

627.162 Requirements for premium installments; delinquency, collection, and check return charges; attorney's fees.—

(2) Insurers providing workers' compensation coverage under chapter 440 may charge the insured a delinquency and collection fee on each installment in default for a period of not less than 5 days in an amount not to exceed \$25 ~~\$10~~ or 5 percent of the delinquent installment, whichever is greater. Only one such delinquency and collection fee may be collected on any such installment regardless of the period during which it remains in default.

Section 21. Section 627.285, Florida Statutes, is created to read:

627.285 Independent actuarial peer review of workers' compensation rating organization.—*The Financial Services Commission shall at least once every other year contract for an independent actuarial peer review and analysis of the ratemaking processes of any licensed rating organization that makes rate filings for workers' compensation insurance and the rating organization shall fully cooperate in the peer review. The contract shall require submission of a final report to the commission, the President of the Senate, and the Speaker of the House of Representatives by February 1. The first report shall be submitted by February 1, 2004. The costs of the independent actuarial peer review shall be paid from the Workers' Compensation Administration Trust Fund.*

Section 22. Effective July, 1, 2003, paragraphs (b), (c), and (d) of subsection (4) of section 627.311, Florida Statutes, are amended to read

627.311 Joint underwriters and joint reinsurers.—

(4)

(b) The operation of the plan is subject to the supervision of a 9-member ~~13-member~~ board of governors. The board of governors shall be comprised of:

1. Three members appointed by the Financial Services Commission. Each member appointed by the commission shall serve at the pleasure of the commission;

2. ~~Two~~ Five of the 20 domestic insurers, as defined in s. 624.06(1), having the largest voluntary direct premiums written in this state for workers' compensation and employer's liability insurance, which shall be elected by those 20 domestic insurers;

3. ~~Two~~ Five of the 20 foreign insurers as defined in s. 624.06(2) having the largest voluntary direct premiums written in this state for workers' compensation and employer's liability insurance, which shall be elected by those 20 foreign insurers;

~~3. One person, who shall serve as the chair, appointed by the Insurance Commissioner;~~

4. One person appointed by the largest property and casualty insurance agents' association in this state; and

5. The consumer advocate appointed under s. 627.0613 or the consumer advocate's designee.

Each board member shall serve a 4-year term and may serve consecutive terms. A vacancy on the board shall be filled in the same manner as the original appointment for the unexpired portion of the term. The Financial Services Commission shall designate a member of the board to serve as chair. No board member shall be an insurer which provides service to the plan or which has an affiliate which provides services to the plan or which is serviced by a service company or third-party administrator which provides services to the plan or which has an affiliate which

provides services to the plan. The minutes, audits, and procedures of the board of governors are subject to chapter 119.

(c) The operation of the plan shall be governed by a plan of operation that is prepared at the direction of the board of governors. The plan of operation may be changed at any time by the board of governors or upon request of the department. The plan of operation and all changes thereto are subject to the approval of the department. The plan of operation shall:

1. Authorize the board to engage in the activities necessary to implement this subsection, including, but not limited to, borrowing money.

2. Develop criteria for eligibility for coverage by the plan, including, but not limited to, documented rejection by at least two insurers which reasonably assures that insureds covered under the plan are unable to acquire coverage in the voluntary market. Any insured may voluntarily elect to accept coverage from an insurer for a premium equal to or greater than the plan premium if the insurer writing the coverage adheres to the provisions of s. 627.171.

3. Require notice from the agent to the insured at the time of the application for coverage that the application is for coverage with the plan and that coverage may be available through an insurer, group self-insurers' fund, commercial self-insurance fund, or assessable mutual insurer through another agent at a lower cost.

4. Establish programs to encourage insurers to provide coverage to applicants of the plan in the voluntary market and to insureds of the plan, including, but not limited to:

a. Establishing procedures for an insurer to use in notifying the plan of the insurer's desire to provide coverage to applicants to the plan or existing insureds of the plan and in describing the types of risks in which the insurer is interested. The description of the desired risks must be on a form developed by the plan.

b. Developing forms and procedures that provide an insurer with the information necessary to determine whether the insurer wants to write particular applicants to the plan or insureds of the plan.

c. Developing procedures for notice to the plan and the applicant to the plan or insured of the plan that an insurer will insure the applicant or the insured of the plan, and notice of the cost of the coverage offered; and developing procedures for the selection of an insuring entity by the applicant or insured of the plan.

d. Provide for a market-assistance plan to assist in the placement of employers. All applications for coverage in the plan received 45 days before the effective date for coverage shall be processed through the market-assistance plan. A market-assistance plan specifically designed to serve the needs of small good policyholders as defined by the board must be finalized by January 1, 1994.

5. Provide for policy and claims services to the insureds of the plan of the nature and quality provided for insureds in the voluntary market.

6. Provide for the review of applications for coverage with the plan for reasonableness and accuracy, using any available historic information regarding the insured.

7. Provide for procedures for auditing insureds of the plan which are based on reasonable business judgment and are designed to maximize the likelihood that the plan will collect the appropriate premiums.

8. Authorize the plan to terminate the coverage of and refuse future coverage for any insured that submits a fraudulent application to the plan or provides fraudulent or grossly erroneous records to the plan or to any service provider of the plan in conjunction with the activities of the plan.

9. Establish service standards for agents who submit business to the plan.

10. Establish criteria and procedures to prohibit any agent who does not adhere to the established service standards from placing business with the plan or receiving, directly or indirectly, any commissions for business placed with the plan.

11. Provide for the establishment of reasonable safety programs for all insureds in the plan. *All insureds of the plan must participate in the safety program.*

12. Authorize the plan to terminate the coverage of and refuse future coverage to any insured who fails to pay premiums or surcharges when due; who, at the time of application, is delinquent in payments of workers' compensation or employer's liability insurance premiums or surcharges owed to an insurer, group self-insurers' fund, commercial self-insurance fund, or assessable mutual insurer licensed to write such coverage in this state; or who refuses to substantially comply with any safety programs recommended by the plan.

13. Authorize the board of governors to provide the services required by the plan through staff employed by the plan, through reasonably compensated service providers who contract with the plan to provide services as specified by the board of governors, or through a combination of employees and service providers.

14. Provide for service standards for service providers, methods of determining adherence to those service standards, incentives and disincentives for service, and procedures for terminating contracts for service providers that fail to adhere to service standards.

15. Provide procedures for selecting service providers and standards for qualification as a service provider that reasonably assure that any service provider selected will continue to operate as an ongoing concern and is capable of providing the specified services in the manner required.

16. Provide for reasonable accounting and data-reporting practices.

17. Provide for annual review of costs associated with the administration and servicing of the policies issued by the plan to determine alternatives by which costs can be reduced.

18. Authorize the acquisition of such excess insurance or reinsurance as is consistent with the purposes of the plan.

19. Provide for an annual report to the department on a date specified by the department and containing such information as the department reasonably requires.

20. Establish multiple rating plans for various classifications of risk which reflect risk of loss, hazard grade, actual losses, size of premium, and compliance with loss control. At least one of such plans must be a preferred-rating plan to accommodate small-premium policyholders with good experience as defined in sub-subparagraph 22.a.

21. Establish agent commission schedules.

22. Establish ~~four~~ *three* subplans as follows:

a. Subplan "A" must include those insureds whose annual premium does not exceed \$2,500 and who have neither incurred any lost-time claims nor incurred medical-only claims exceeding 50 percent of their premium for the immediate 2 years.

b. Subplan "B" must include insureds that are employers identified by the board of governors as high-risk employers due solely to the nature of the operations being performed by those insureds and for whom no market exists in the voluntary market, and whose experience modifications are less than 1.00.

c. Subplan "C" must include all ~~other~~ insureds within the plan *that are not eligible for subplan "A," subplan "B," or subplan "D."*

d. *Subplan "D" must include any employer, regardless of the length of time for which it has conducted business operations, which has an experience modification factor of 1.10 or less and either employs 15 or fewer employees or is an organization that is exempt from federal income tax pursuant to s. 501(c)(3) of the Internal Revenue Code and receives more than 50 percent of its funding from gifts, grants, endowments, or federal or state contracts. The rate plan for subplan "D" shall be the same rate plan as the plan approved under ss. 627.091-627.151 and each participant in subplan "D" shall pay the premium determined under such rate plan, plus a surcharge determined by the board to be sufficient to ensure that the plan does not compete with the voluntary market rate for any participant, but not to exceed 25 percent. However, the surcharge shall not exceed 10 percent for an organization that is exempt from federal income tax pursuant to s. 501(c)(3) of the Internal Revenue Code.*

23. Provide for a depopulation program to reduce the number of insureds in subplan "D." If an employer insured through subplan "D" is offered coverage from a voluntary market carrier:

- a. During the first 30 days of coverage under the subplan;
 - b. Before a policy is issued under the subplan;
 - c. By issuance of a policy upon expiration or cancellation of the policy under the subplan; or
 - d. By assumption of the subplan's obligation with respect to an in-force policy,
- that employer is no longer eligible for coverage through the plan. The premium for risks assumed by the voluntary market carrier must be the same premium plus, for the first 2 years, the surcharge as determined in sub-subparagraph 22.d. A premium under this subparagraph, including surcharge, is deemed approved and is not an excess premium for purposes of s. 627.171.

24. Require that policies issued under subplan "D" and applications for such policies must include a notice that the policy issued under subplan "D" could be replaced by a policy issued from a voluntary market carrier and that, if an offer of coverage is obtained from a voluntary market carrier, the policyholder is no longer eligible for coverage through subplan "D." The notice must also specify that acceptance of coverage under subplan "D" creates a conclusive presumption that the applicant or policyholder is aware of this potential.

(d)1. The plan must be funded through actuarially sound premiums charged to insureds of the plan.

2. The plan may issue assessable policies only to those insureds in subplan "C" and subplan "D." Subject to verification by the department, the board may levy assessments against insureds in subplan "C" or subplan "D," on a pro rata earned premium basis, to fund any deficits that exist in those subplans. Assessments levied against subplan "C" participants shall cover only the deficits attributable to subplan "C," and assessments levied against subplan "D" participants shall cover only the deficits attributable to subplan "D." In no event may the plan levy assessments against any person or entity, except as authorized by this paragraph. Those assessable policies must be clearly identified as assessable by containing, in contrasting color and in not less than 10-point type, the following statements: "This is an assessable policy. If the plan is unable to pay its obligations, policyholders will be required to contribute on a pro rata earned premium basis the money necessary to meet any assessment levied."

3. The plan may issue assessable policies with differing terms and conditions to different groups within subplans "C" and "D" the plan when a reasonable basis exists for the differentiation.

4. The plan may offer rating, dividend plans, and other plans to encourage loss prevention programs.

Section 23. Paragraphs (c) and (e) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

Florida Statute	Felony Degree	Description	Florida Statute	Felony Degree	Description
			319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
			327.35(2)(b)	3rd	Felony BUI.
			328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
			328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
			376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
			440.105(3)b.	3rd	Receipt of fee or consideration without approval by judge of compensation claims.
			440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
			501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
			697.08	3rd	Equity skimming.
			790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
			796.05(1)	3rd	Live on earnings of a prostitute.
			806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in fire-fighting.
			806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
			810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
			812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
			812.0145(2)(c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
			815.04(4)(b)	2nd	Computer offense devised to defraud or obtain property.
			817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
			817.233	3rd	Burning to defraud insurer.
			817.234(8)&(9)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
			817.234(11)(a)	3rd	Insurance fraud; property value less than \$20,000.
			817.505(4)	3rd	Patient brokering.
			828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
		(c) LEVEL 3	831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
316.193(2)(b)	3rd	Felony DUI, 3rd conviction.			
316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in marked patrol vehicle with siren and lights activated.	831.29	2nd	Possession of instruments for counterfeiting drivers' licenses or identification cards.
319.30(4)	3rd	Possession of junkyard of motor vehicle with identification number plate removed.	838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.	843.19	3rd	Injure, disable, or kill police dog or horse.
319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.	870.01(2)	3rd	Riot; inciting or encouraging.

Florida Statute	Felony Degree	Description	Florida Statute	Felony Degree	Description
893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 200 feet of university or public park.	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 200 feet of public housing facility.	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.	790.01(2)	3rd	Carrying a concealed firearm.
893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.	790.162	2nd	Threat to throw or discharge destructive device.
893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.	790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.
893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.	790.23	2nd	Felons in possession of firearms or electronic weapons or devices.
893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years.
893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.	800.04(7)(c)	2nd	Lewd or lascivious exhibition; offender 18 years or older.
893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
944.47 (1)(a)1.-2.	3rd	Introduce contraband to correctional facility.	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.	812.131(2)(b)	3rd	Robbery by sudden snatching.
985.3141	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
		(e) LEVEL 5	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
316.027(1)(a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
316.1935(4)	2nd	Aggravated fleeing or eluding.	817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$75,000 or more.
322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.	817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.	825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
381.0041 (11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.	827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
			839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
			843.01	3rd	Resist officer with violence to person; resist arrest with violence.
			874.05(2)	2nd	Encouraging or recruiting another to join a criminal street gang; second or subsequent offense.
			893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).

Florida Statute	Felony Degree	Description
893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of a child care facility or school.
893.13(1)(d)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 200 feet of university or public park.
893.13(1)(e)2.	2nd	Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.
893.13(1)(f)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)4. drugs) within 200 feet of public housing facility.
893.13(4)(b)	2nd	Deliver to minor cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).

Section 24. *Report to the Legislature regarding outstanding enforcement issues.*—The Department of Financial Services shall, no later than January 1, 2004, provide a report to the President of the Senate, the Speaker of the House of Representatives, the minority leaders of the Senate and the House of Representatives, and the chairs of the standing committees of the Senate and the House of Representatives having jurisdiction over insurance issues, containing the following information:

(1) Any provision of chapter 440, Florida Statutes, relating to workers' compensation carrier compliance and enforcement, that the department finds it is unable to enforce.

(2) Any administrative rule relating to workers' compensation carrier compliance and enforcement that the department finds it is unable to enforce.

(3) Any other impediment to enforcement of chapter 440, Florida Statutes, resulting from the transfer of activities from the former Department of Labor and Employment Security to the department or the reorganization of the former Department of Insurance into the department.

Section 25. (1) *There is established a Joint Select Committee on Workers Compensation Rating Reform. The committee shall study the merits of requiring each workers' compensation insurer to individually file its expense and profit portion of a rate filing, while permitting each insurer to use a lost cost filing made by a licensed rating organization. The committee shall also study options for the current prior approval system for workers compensation rate filings, including, but not limited to, rate filing procedures that would promote greater competition and would encourage insurers to write workers' compensation coverage in the state while protecting employers from rates that are excessive, inadequate, or unfairly discriminatory.*

(2) *The committee shall be composed of three Senators appointed by the President of the Senate and three Representatives appointed by the Speaker of the House of Representatives. The appointed members of the committee shall elect a chair and vice chair. The Department of Financial Services shall provide information and assistance as requested by the committee.*

(3) *The committee shall issue its final report and recommendations to the President of the Senate and the Speaker of the House of Representatives by December 1, 2003. The committee shall terminate on December 1, 2003.*

Section 26. *The board of governors of the joint underwriting plan for workers' compensation insurance created by section 627.311(4), Florida Statutes, shall, by January 1, 2005, submit a report to the President of the Senate, the Speaker of the House of Representatives, the minority*

party leaders of the Senate and the House of Representatives, and the chairs of the standing committees of the Senate and the House of Representatives having jurisdiction over matters relating to workers' compensation. The report shall include the board's findings and recommendations on the following issues:

(1) *The number of policies and the aggregate premium of the workers' compensation joint underwriting plan, before and after enactment of this act, and projections for future policy and premium growth.*

(2) *Increases or decreases in availability of workers' compensation coverage in the voluntary market and the effectiveness of this act in improving the availability of workers' compensation coverage in the state.*

(3) *The board's efforts to depopulate the plan and the willingness of insurers in the voluntary market to avail themselves of depopulation incentives.*

(4) *Further actions that could be taken by the Legislature to improve availability of workers' compensation coverage in the voluntary and residual markets.*

(5) *Actions that the board has taken to restructure the joint underwriting plan and recommendations for legislative action to restructure the plan.*

(6) *Projected surpluses or deficits and possible means of providing funding to ensure the continued solvency of the plan.*

(7) *An independent actuarial review of all rates under the plan. The costs of the independent actuarial review shall be paid from the Workers' Compensation Administration Trust Fund, pursuant to a budget amendment approved by the Legislative Budget Commission. The board shall submit a plan for such review to the Legislative Budget Commission by October 1, 2003.*

(8) *Such other issues as the board determines are worthy of the Legislature's consideration.*

Section 27. Subsections (1) and (2) of section 443.1715, Florida Statutes, are amended to read:

443.1715 Disclosure of information; confidentiality.—

(1) **RECORDS AND REPORTS.**—Information revealing the employing unit's or individual's identity obtained from the employing unit or from any individual pursuant to the administration of this chapter, and any determination revealing such information, except to the extent necessary for the proper presentation of a claim or upon written authorization of the claimant who has a workers' compensation claim pending or is receiving compensation benefits, must be held confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Such information may be made available only to public employees in the performance of their public duties, including employees of the Department of Education in obtaining information for the Florida Education and Training Placement Information Program and the Office of Tourism, Trade, and Economic Development in its administration of the qualified defense contractor tax refund program authorized by s. 288.1045 and the qualified target industry tax refund program authorized by s. 288.106. Except as otherwise provided by law, public employees receiving such information must retain the confidentiality of such information. Any claimant, or the claimant's legal representative, at a hearing before an appeals referee or the commission shall be supplied with information from such records to the extent necessary for the proper presentation of her or his claim. Any employee or member of the commission or any employee of the division, or any other person receiving confidential information, who violates any provision of this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. However, the division may furnish to any employer copies of any report previously submitted by such employer, upon the request of such employer, and may furnish to any claimant copies of any report previously submitted by such claimant, upon the request of such claimant, and the division is authorized to charge therefor such reasonable fee as the division may by rule prescribe not to exceed the actual reasonable cost of the preparation of such copies. Fees received by the division for copies as provided in this subsection must be deposited to the credit of the Employment Security Administration Trust Fund.

(2) DISCLOSURE OF INFORMATION.—

(a) Subject to such restrictions as the division prescribes by rule, information declared confidential under this section may be made available to any agency of this or any other state, or any federal agency, charged with the administration of any unemployment compensation law or the maintenance of a system of public employment offices, or the Bureau of Internal Revenue of the United States Department of the Treasury, or the Florida Department of Revenue and information obtained in connection with the administration of the employment service may be made available to persons or agencies for purposes appropriate to the operation of a public employment service or a job-preparatory or career education or training program. The division shall on a quarterly basis, furnish the National Directory of New Hires with information concerning the wages and unemployment compensation paid to individuals, by such dates, in such format and containing such information as the Secretary of Health and Human Services shall specify in regulations. Upon request therefor, the division shall furnish any agency of the United States charged with the administration of public works or assistance through public employment, and may furnish to any state agency similarly charged, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this chapter. Except as otherwise provided by law, the receiving agency must retain the confidentiality of such information as provided in this section. The division may request the Comptroller of the Currency of the United States to cause an examination of the correctness of any return or report of any national banking association rendered pursuant to the provisions of this chapter and may in connection with such request transmit any such report or return to the Comptroller of the Currency of the United States as provided in s. 3305(c) of the federal Internal Revenue Code.

(b)1. *The employer or the employer's workers' compensation carrier against whom a claim for benefits under chapter 440 has been made, or a representative of either, may request from the division records of wages of the employee reported to the division by any employer for the quarter that includes the date of the accident that is the subject of such claim and for subsequent quarters. The request must be made with the authorization or consent of the employee or any employer who paid wages to the employee subsequent to the date of the accident.*

2. *The employer or carrier shall make the request on a form prescribed by rule for such purpose by the division. Such form shall contain a certification by the requesting party that it is a party entitled to the information requested as authorized by this paragraph.*

3. *The division shall provide the most current information readily available within 15 days after receiving the request.*

Section 28. Subsection (9) of section 626.989, Florida Statutes, is amended to read:

626.989 Investigation by department or Division of Insurance Fraud; compliance; immunity; confidential information; reports to division; division investigator's power of arrest.—

(9) In recognition of the complementary roles of investigating instances of workers' compensation fraud and enforcing compliance with the workers' compensation coverage requirements under chapter 440, the Department of Financial Services shall ~~Insurance is directed to~~ prepare and submit a joint performance report to the President of the Senate and the Speaker of the House of Representatives by November 1, 2003, and then by ~~January 1 of each year November 1 every 3 years thereafter, describing the results obtained in achieving compliance with the workers' compensation coverage requirements and reducing the incidence of workers' compensation fraud.~~ The annual report must include, but need not be limited to:

(a) *The total number of initial referrals received, cases opened, cases presented for prosecution, cases closed, and convictions resulting from cases presented for prosecution by the Bureau of Workers' Compensation Insurance Fraud by type of workers' compensation fraud and circuit.*

(b) *The number of referrals received from insurers and the Division of Workers' Compensation and the outcome of those referrals.*

(c) *The number of investigations undertaken by the office which were not the result of a referral from an insurer or the Division of Workers' Compensation.*

(d) *The number of investigations that resulted in a referral to a regulatory agency and the disposition of those referrals.*

(e) *The number and reasons provided by local prosecutors or the statewide prosecutor for declining prosecution of a case presented by the office by circuit.*

(f) *The total number of employees assigned to the office and the Division of Workers' Compliance unit delineated by location of staff assigned and the number and location of employees assigned to the office who were assigned to work other types of fraud cases.*

(g) *The average caseload and turnaround time by type of case for each investigator and division compliance employee.*

(h) *The training provided during the year to workers' compensation fraud investigators and the division's compliance employees.*

Section 29. Section 626.9891, Florida Statutes, is amended to read:

626.9891 Insurer anti-fraud investigative units; reporting requirements; penalties for noncompliance.—

(1) Every insurer admitted to do business in this state who in the previous calendar year, at any time during that year, had \$10 million or more in direct premiums written shall:

(a) Establish and maintain a unit or division within the company to investigate possible fraudulent claims by insureds or by persons making claims for services or repairs against policies held by insureds; or

(b) Contract with others to investigate possible fraudulent claims for services or repairs against policies held by insureds.

An insurer subject to this subsection shall file with the Division of Insurance Fraud of the department on or before July 1, 1996, a detailed description of the unit or division established pursuant to paragraph (a) or a copy of the contract and related documents required by paragraph (b).

(2) Every insurer admitted to do business in this state, which in the previous calendar year had less than \$10 million in direct premiums written, must adopt an anti-fraud plan and file it with the Division of Insurance Fraud of the department on or before July 1, 1996. An insurer may, in lieu of adopting and filing an anti-fraud plan, comply with the provisions of subsection (1).

(3) Each insurers anti-fraud plans shall include:

(a) A description of the insurer's procedures for detecting and investigating possible fraudulent insurance acts;

(b) A description of the insurer's procedures for the mandatory reporting of possible fraudulent insurance acts to the Division of Insurance Fraud of the department;

(c) A description of the insurer's plan for anti-fraud education and training of its claims adjusters or other personnel; and

(d) A written description or chart outlining the organizational arrangement of the insurer's anti-fraud personnel who are responsible for the investigation and reporting of possible fraudulent insurance acts.

(4) Any insurer who obtains a certificate of authority after July 1, 1995, shall have 18 months in which to comply with the requirements of this section.

(5) For purposes of this section, the term "unit or division" includes the assignment of fraud investigation to employees whose principal responsibilities are the investigation and disposition of claims. If an insurer creates a distinct unit or division, hires additional employees, or contracts with another entity to fulfill the requirements of this section, the additional cost incurred must be included as an administrative expense for ratemaking purposes.

(6) *Each insurer writing workers' compensation insurance shall report to the department, on or before August 1 of each year, on its experience in implementing and maintaining an anti-fraud investigative unit or an anti-fraud plan. The report must include, at a minimum:*

(a) *The dollar amount of recoveries and losses attributable to workers' compensation fraud delineated by the type of fraud: claimant, employer, provider, agent, or other.*

(b) *The number of referrals to the Bureau of Workers' Compensation Fraud for the prior year.*

(c) *A description of the organization of the anti-fraud investigative unit, if applicable, including the position titles and descriptions of staffing.*

(d) *The rationale for the level of staffing and resources being provided for the anti-fraud investigative unit, which may include objective criteria such as number of policies written, number of claims received on an annual basis, volume of suspected fraudulent claims currently being detected, other factors, and an assessment of optimal caseload that can be handled by an investigator on an annual basis.*

(e) *The in-service education and training provided to underwriting and claims personnel to assist in identifying and evaluating instances of suspected fraudulent activity in underwriting or claims activities.*

(f) *A description of a public awareness program focused on the costs and frequency of insurance fraud and methods by which the public can prevent it.*

(7) *If an insurer fails to submit a final anti-fraud plan or otherwise fails to submit a plan, fails to implement the provisions of a plan or an anti-fraud investigative unit, or otherwise refuses to comply with the provisions of this section, the department may:*

(a) *Impose an administrative fine of not more than \$2,000 per day for such failure by an insurer, until the department deems the insurer to be in compliance;*

(b) *Impose upon the insurer a fraud detection and prevention plan that is deemed to be appropriate by the department and that must be implemented by the insurer; or*

(c) *Impose the provisions of both paragraphs (a) and (b).*

(8) *The department may adopt rules to administer this section.*

Section 30. *The amendments to sections 440.02 and 440.15, Florida Statutes, which are made by this act shall not be construed to affect any determination of disability under section 112.18, section 112.181, or section 112.19, Florida Statutes.*

Section 31. *If any law amended by this act was also amended by a law enacted at the 2003 Regular Session of the Legislature, such laws shall be construed as if they had been enacted at the same session of the Legislature, and full effect shall be given to each if possible.*

Section 32. Except as otherwise provided herein, this act shall take effect October 1, 2003.

And the title is amended as follows:

Delete everything before the enacting clause and insert: A bill to be entitled An act relating to workers' compensation; amending s. 440.02, F.S.; providing, revising definitions; amending s. 440.05, F.S.; revising authorization to claim exemptions and requirements relating to submitting notice of election of exemption; specifying effect of exemption; providing a definition; amending s. 440.06, F.S.; revising provisions relating to failure to secure compensation; amending s. 440.077, F.S.; providing that a corporate officer electing to be exempt may not receive benefits; amending s. 440.09, F.S.; providing definitions; revising provisions relating to drug testing; specifying effect of criminal acts; amending s. 440.10, F.S.; requiring subcontractors to provide evidence of workers' compensation coverage or proof of exemption to a contractor; deleting provisions relating to independent contractors; amending s. 440.1025, F.S.; revising requirements relating to workplace safety programs; amending s. 440.103, F.S.; providing conditions for applying for building permits; amending s. 440.105, F.S.; increasing criminal penalties for certain violations; providing sanctions for violation of stop-work orders and presentation of certain false or misleading statements as evidence; amending s. 440.1051, F.S.; increasing criminal penalty for false reports; amending s. 440.107, F.S.; providing additional powers to the Department of Financial Services relating to compliance and enforcement; providing a definition; providing penalties; amending s. 440.15, F.S.; provid-

ing additional limitations on compensation for permanent total disability; providing a definition; amending s. 440.185, F.S.; specifying duty of employer upon receipt of notice of injury or death; increasing penalties for noncompliance; amending s. 440.20, F.S.; revising provisions relating to timely payment of compensation and medical bills and penalties for late payment; amending s. 440.38, F.S.; providing requirement for employers with coverage provided by insurers from outside the state; amending s. 440.381, F.S.; providing criminal penalty for unlawful applications; requiring on-site audits of employers under certain circumstances; amending s. 440.42, F.S.; revising provision relating to notice of cancellation of coverage; amending s. 440.525, F.S.; providing for the Office of Insurance Regulation of the Financial Services Commission to conduct examinations and investigations of claims-handling entities; providing penalties; providing for rules; amending s. 627.162, F.S.; revising delinquency and collection fee for late payment of premium installments; creating s. 627.285, F.S.; providing for annual actuarial peer review of rating organization processes; requiring a report; amending s. 627.311, F.S.; revising membership of the board of governors of the workers' compensation joint underwriting plan; requiring participation in safety programs; providing for an additional subplan within the joint underwriting plan for workers' compensation insurance; providing for rates, surcharges, and assessments; limiting assessment powers; amending s. 921.0022, F.S.; revising the offense severity ranking chart to reflect changes in penalties under the act; requiring a report to the Legislature from the Department of Financial Services regarding provisions of law relating to enforcement; establishing a Joint Select Committee on Workers' Compensation Rating Reform and specifying duties thereof; providing for termination of the committee; requiring the board of governors of the workers' compensation joint underwriting plan to submit a report to the Legislature; amending s. 443.1715, F.S.; revising provisions relating to records and reports; providing for disclosure of specified information; amending s. 625.989, F.S.; providing that the Department of Financial Services shall prepare an annual report relating to workers' compensation fraud and compliance; amending s. 626.9891, F.S.; amending reporting requirements for insurers; providing penalties for noncompliance; providing for rules; providing that amendments to ss. 440.02 and 440.15, F.S., do not affect certain disability, determination, and benefits; providing for construction of the act in pari materia with laws enacted during the Regular Session of the Legislature; providing effective dates.

Senator Wasserman Schultz moved the following amendments which failed:

Amendment 2 (713820)—On page 13, lines 9-29, delete those lines and insert: impairment constituted by:

(a) Spinal cord injury involving severe paralysis of an arm, a leg, or the trunk;

(b) Amputation of an arm, a hand, a foot, or a leg involving the effective loss of use of that appendage;

(c) Severe brain or closed-head injury as evidenced by:

1. Severe sensory or motor disturbances;
2. Severe communication disturbances;
3. Severe complex integrated disturbances of cerebral function;
4. Severe episodic neurological disorders; or
5. Other severe brain and closed-head injury conditions at least as severe in nature as any condition provided in subparagraphs 1.-4.;

(d) Second-degree or third-degree burns of 25 percent or more of the total body surface or third-degree burns of 5 percent or more to the face and hands; or

(e) Total or industrial blindness; ~~or~~

The vote was:

Yeas—18

Argenziano	Campbell	Geller
Aronberg	Carlton	Hill
Bullard	Cowin	Klein

Lawson	Miller	Smith	Siplin	Wasserman Schultz	Wilson
Lynn	Posey	Wasserman Schultz	Smith		
Margolis	Siplin	Wilson	Nays—23		
Nays—20			Mr. President	Diaz de la Portilla	Posey
Mr. President	Diaz de la Portilla	Pruitt	Alexander	Dockery	Pruitt
Alexander	Dockery	Saunders	Argenziano	Fasano	Saunders
Atwater	Fasano	Sebesta	Atwater	Haridopolos	Sebesta
Bennett	Haridopolos	Villalobos	Bennett	Jones	Villalobos
Clary	Jones	Webster	Clary	Lee	Webster
Constantine	Lee	Wise	Constantine	Lynn	Wise
Crist	Peaden		Cowin	Peaden	

Amendment 3 (435000)—On page 37, lines 3-10, delete those lines

The vote was:

Yeas—15

Aronberg	Geller	Posey
Bullard	Hill	Siplin
Campbell	Klein	Smith
Carlton	Margolis	Wasserman Schultz
Crist	Miller	Wilson

Nays—20

Mr. President	Diaz de la Portilla	Peaden
Alexander	Dockery	Saunders
Argenziano	Fasano	Sebesta
Atwater	Haridopolos	Villalobos
Clary	Jones	Webster
Constantine	Lee	Wise
Cowin	Lynn	

SENATOR CARLTON PRESIDING

Senator Campbell moved the following amendment which failed:

Amendment 4 (371438)—On page 38, line 25 through page 39, line 8, delete those lines and insert:

(e) A subcontractor is not liable for the payment of compensation to the employees of another subcontractor on such contract work and is not protected by the exclusiveness-of-liability provisions of s. 440.11 from action at law or in admiralty on account of injury of such employee of another subcontractor.

Senator Campbell moved the following amendment which was adopted:

Amendment 5 (473102)(with title amendment)—On page 59, line 10 through page 61, line 31, delete those lines

(Redesignate subsequent sections.)

And the title is amended as follows:

On page 2, lines 10-13, delete those lines and insert: 440.13, F.S.; providing

SENATOR VILLALOBOS PRESIDING

THE PRESIDENT PRESIDING

Senator Wasserman Schultz moved the following amendments which failed:

Amendment 6 (093150)—On page 75, lines 28-31, delete those lines and insert: by licensure and applicable practice parameters. *The party requesting and*

The vote was:

Yeas—13

Aronberg	Crist	Klein
Bullard	Geller	Margolis
Campbell	Hill	Miller

Amendment 7 (145768)—On page 156, line 3 through page 159, line 28, delete those lines and insert:

Section 26. Subsections (1), (2), and (3) of section 440.34, Florida Statutes, are amended to read:

440.34 Attorney's fees; costs.—

(1) A fee, gratuity, or other consideration may not be paid for services rendered for a claimant in connection with any proceedings arising under this chapter, unless approved as reasonable by the judge of compensation claims or court having jurisdiction over such proceedings. Except as provided by this subsection, any attorney's fee approved by a judge of compensation claims for services rendered to a claimant must be equal to 20 percent of the first \$5,000 of the amount of the benefits secured, 15 percent of the next \$5,000 of the amount of the benefits secured, 10 percent of the remaining amount of the benefits secured to be provided during the first 10 years after the date the claim is filed, and 5 percent of the benefits secured after 10 years. *In the alternative, if the judge of compensation claims concludes that the percentage fee provided in this subsection does not fairly compensate the attorney, he or she may award an attorney's fee not to exceed \$5,000. However, the judge of compensation claims shall consider the following factors in each case and may increase or decrease the attorney's fee if, in her or his judgment, the circumstances of the particular case warrant such action:*

(a) ~~The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.~~

(b) ~~The fee customarily charged in the locality for similar legal services.~~

(c) ~~The amount involved in the controversy and the benefits resulting to the claimant.~~

(d) ~~The time limitation imposed by the claimant or the circumstances.~~

(e) ~~The experience, reputation, and ability of the lawyer or lawyers performing services.~~

(f) ~~The contingency or certainty of a fee.~~

(2) In awarding a reasonable claimant's attorney's fee, the judge of compensation claims shall consider only those benefits secured by the attorney to the claimant that the attorney is responsible for securing. The amount, statutory basis, and type of benefits obtained through legal representation shall be listed on all attorney's fees awarded by the judge of compensation claims. For purposes of this section, the term "benefits secured" means benefits obtained as a result of the claimant's attorney's legal services rendered in connection with the claim for benefits. However, such term does not include future medical benefits to be provided on any date more than 5 years after the date the claim is filed. *If an offer to settle an issue pending before a judge of compensation claims is communicated in writing to the claimant or the claimant's attorney not later than the date of the pretrial, the benefits secured shall be those offered to settle each issue. If the offer to settle an issue is rejected by the claimant, any claim against the carrier for hourly fees is waived on that issue unless the amount awarded is 10 percent greater than the amount specified in the offer. If multiple issues are pending before the judge of compensation claims, the offer of settlement must address each pending issue and must state explicitly whether or not the offer on each issue is severable. The written offer must also unequivocally state whether or not it includes medical witness fees and expenses and all other costs associated with the*

claim. Acceptance of an offer by a claimant must be communicated in writing to the carrier and its counsel, if any. The benefits contained in the offer, excluding fees and costs, shall be due and payable 14 days after the date the carrier receives the acceptance.

(3) If the claimant should prevail in any proceedings before a judge of compensation claims or court, there shall be taxed against the employer the reasonable costs of such proceedings, not to include the attorney's fees of the claimant. A claimant shall be responsible for the payment of her or his own attorney's fees, except that a claimant shall be entitled to recover an attorney's fee as provided under subsection (1) from a carrier or employer:

(a) Against whom she or he successfully asserts a petition for medical benefits only, if the claimant has not filed or is not entitled to file at such time a claim for disability, permanent impairment, wage-loss, or death benefits, arising out of the same accident;

(b) In any case in which the employer or carrier files a response to petition denying benefits with the Office of the Judges of Compensation Claims and the injured person has employed an attorney in the successful prosecution of the petition;

(c) In a proceeding in which a carrier or employer denies that an accident occurred for which compensation benefits are payable, and the claimant prevails on the issue of compensability; or

(d) In cases where the claimant successfully prevails in proceedings filed under s. 440.24 or s. 440.28.

Regardless of the date benefits were initially requested, attorney's fees shall not attach under this subsection until 30 days after the date the carrier or employer, if self-insured, receives the petition. ~~In applying the factors set forth in subsection (1) to cases arising under paragraphs (a), (b), (c), and (d), the judge of compensation claims must only consider only such benefits and the time reasonably spent in obtaining them as were secured for the claimant within the scope of paragraphs (a), (b), (c), and (d).~~

Amendment 8 (385820)—On page 158, lines 3-14, delete those lines and insert: *claimant's attorney not later than the date of the pretrial hearing, the benefits secured shall be those offered to settle each issue. If the offer to settle an issue is rejected by the claimant, any claim against the carrier for an attorney's fee in excess of the fee due under the terms of the offer is waived on such issue unless the amount awarded at trial is at least 10 percent greater than the amount specified in the offer. If multiple issues are pending before the judge of compensation claims, the offer of settlement shall address each issue pending, and shall state explicitly whether or not the offer on each issue is severable. The written offer shall also unequivocally state whether or not it includes medical witness fees and expenses, and all other costs associated with the claim. Acceptance of an offer by a claimant shall be communicated in writing to the carrier and its counsel, if any. The benefits contained in the offer, excluding fees and costs, shall be due and payable 14 days after the date the carrier receives the acceptance.*

Senator Campbell moved the following amendments which failed:

Amendment 9 (335508)(with title amendment)—On page 167, between lines 29 and 30, insert:

Section 33. Section 627.096, Florida Statutes, is amended to read:

627.096 Workers' Compensation Rating Bureau.—

(1) There is created within the department a Workers' Compensation Rating Bureau, which shall make an investigation and study of all insurers authorized to issue workers' compensation and employer's liability coverage in this state. Such bureau shall study the data, statistics, schedules, or other information as it may deem necessary to assist and advise the department in its review of filings made by or on behalf of workers' compensation and employer's liability insurers. *The bureau shall analyze proposed legislation and shall give advice and make recommendations to the Legislature as to the potential impact on rates of such pending legislation.* The department shall have the authority to promulgate rules requiring all workers' compensation and employer's liability insurers and rating organizations to submit to the rating bureau any data, statistics, schedules, templates, models, calculations, and other information related to rates and ratemaking deemed necessary to the

rating bureau's study and advisement. *All such information submitted to or considered by the rating bureau is public record; however, this does not require the disclosure of individual claim information that is otherwise confidential under law.*

(2) *The bureau may contract with an independent actuary who is a member of the American Society of Actuaries to assist it with its responsibilities under this section; however, to prevent conflicts of interest, the bureau may not contract with an insurer, a rating organization, or an actuary or other entity affiliated with an insurer or rating organization to provide services in conjunction with the bureau's responsibilities under this section. Costs incurred under this subsection associated with the analysis of proposed legislation shall be paid from the Workers' Compensation Administration Trust Fund.*

(3)(2) The acquisition by the Department of Management Services of data processing software, hardware, and services necessary to carry out the provisions of this act for the Treasurer's Management Information Center of the Department of Insurance shall be exempt from the provisions of part I of chapter 287.

(Redesignate subsequent sections.)

And the title is amended as follows:

On page 4, line 17, after the first semicolon (;) insert: amending s. 627.096, F.S.; specifying certain responsibilities of the Workers' Compensation Rating Bureau; making certain information available to the public; prohibiting conflicts of interest;

Amendment 10 (985440)(with title amendment)—On page 197, between lines 15 and 16, insert:

Section 45. *It is the intent of the Legislature that the cost of workers' compensation insurance be reduced to employers who are required to maintain such coverage. On September 1, 2003, rates for workers' compensation insurance shall be reduced by each insurer as defined in section 624.08, Florida Statutes, commercial self-insurance fund as defined in section 624.462, Florida Statutes, and group self-insurer as defined in section 440.02, Florida Statutes. The September 1, 2003, rate reduction for each insurer, commercial self-insurance fund, and group self-insurer shall be 15 percent of the rates that were effective on January 1, 2003, and the revised rates must remain in effect until January 1, 2005. There may not be any exceptions to the requirements of this section, unless the Department of Financial Services finds that the use of the revised rates by a particular insurer, commercial self-insurance fund, or group self-insurer will result in rates that jeopardize the solvency of the insurer, commercial self-insurance fund, or group self-insurer. Any new or renewal policy entered into on or after September 1, 2003, must reflect the 15-percent reduction in rates for the required coverage under this act. The Department of Insurance shall adopt rules applying this section to the unexpired term of all workers' compensation insurance policies in existence on September 1, 2003. Any insurer, commercial self-insurance fund, or group self-insurer that has an approved deviation or discount in existence on or before September 1, 2003, shall discontinue use of such deviation or discount as of September 1, 2003, with regard to all insureds. An insurer, a commercial self-insurance fund, or a group self-insurer may not make written application to the Department of Insurance for permission to file a uniform percentage decrease below the revised rates effective as of September 1, 2003.*

(Redesignate subsequent sections.)

And the title is amended as follows:

On page 5, line 22, after the semicolon (;) insert: requiring a reduction in workers' compensation insurance rates and specifying a procedure for implementation;

The vote was:

Yeas—13

Aronberg	Hill	Miller
Bullard	Klein	Siplin
Campbell	Lawson	Wasserman Schultz
Crist	Margolis	Wilson
Geller		

Nays—25

Mr. President	Diaz de la Portilla	Pruitt
Alexander	Dockery	Saunders
Argenziano	Fasano	Sebesta
Atwater	Haridopolos	Smith
Bennett	Jones	Villalobos
Carlton	Lee	Webster
Clary	Lynn	Wise
Constantine	Peaden	
Cowin	Posey	

Vote after roll call:

Yea to Nay—Crist

Senator Wasserman Schultz moved the following amendments which failed:

Amendment 11 (220450)—On page 159, between lines 28 and 29, insert:

(8) If, in defending a petition for benefits, an employer or carrier incurs attorney's fees that exceed the fee payable to the claimant's attorney under this section, the fee limitations as set forth in this section shall not apply, and the fee due the claimant's attorney shall be a reasonable fee as determined by the judge of compensation claims.

Amendment 12 (574156)—On page 37, line 5, delete “3 months” and insert: 1 year

The vote was:

Yeas—13

Aronberg	Hill	Siplin
Bullard	Klein	Smith
Campbell	Margolis	Wasserman Schultz
Crist	Miller	Wilson
Geller		

Nays—23

Mr. President	Diaz de la Portilla	Posey
Alexander	Dockery	Pruitt
Argenziano	Fasano	Saunders
Atwater	Haridopolos	Sebesta
Carlton	Jones	Villalobos
Clary	Lee	Webster
Constantine	Lynn	Wise
Cowin	Peaden	

Pursuant to Rule 4.19, **SB 50-A** as amended was ordered engrossed and then placed on the calendar of Bills on Third Reading.

The Senate resumed consideration of—

CS for SB 32-A—A bill to be entitled An act relating to motor vehicle insurance costs; providing a short title; providing legislative findings and purpose; amending s. 119.105, F.S.; prohibiting disclosure of confidential police reports for purposes of commercial solicitation; amending s. 316.066, F.S.; requiring the filing of a sworn statement as a condition to accessing a crash report stating the report will not be used for commercial solicitation; providing a penalty; creating part XIII of ch. 400, F.S., entitled the Health Care Clinic Act; providing for definitions and exclusions; providing for the licensure, inspection, and regulation of health care clinics by the Agency for Health Care Administration; requiring licensure and background screening; providing for clinic inspections; providing rulemaking authority; providing licensure fees; providing fines and penalties for operating an unlicensed clinic; providing for clinic responsibilities with respect to personnel and operations; providing accreditation requirements; providing for injunctive proceedings and agency actions; providing administrative penalties; amending s. 456.0375, F.S.; excluding certain entities from clinic registration requirements; providing retroactive application; amending s. 456.072, F.S.; providing that making a claim with respect to personal injury protection which is upcoded or which is submitted for payment of services not rendered constitutes grounds for disciplinary action; amending

s. 627.732, F.S.; providing definitions; amending s. 627.736, F.S.; providing that benefits are void if fraud is committed; providing for award of attorney's fees in actions to recover benefits; providing that consideration shall be given to certain factors regarding the reasonableness of charges; specifying claims or charges that an insurer is not required to pay; requiring the Department of Health, in consultation with medical boards, to identify certain diagnostic tests as non-compensable; specifying effective dates; deleting certain provisions governing arbitration; providing for compliance with billing procedures; requiring certain providers to require an insured to sign a disclosure form; prohibiting insurers from authorizing physicians to change opinion in reports; providing requirements for physicians with respect to maintaining such reports; expanding provisions providing for a demand letter; authorizing the Financial Services Commission to determine cost savings under personal injury protection benefits under specified conditions; amending s. 627.739, F.S.; allowing a person who elects a deductible or modified coverage to claim the amount deducted from a person legally responsible; specifying application of a deductible amount; amending s. 817.234, F.S.; providing that it is a material omission and insurance fraud for a physician or other provider to waive a deductible or copayment or not collect the total amount of a charge; increasing the penalties for certain acts of solicitation of accident victims; providing mandatory minimum penalties; prohibiting certain solicitation of accident victims; providing penalties; prohibiting a person from participating in an intentional motor vehicle accident for the purpose of making motor vehicle tort claims; providing penalties, including mandatory minimum penalties; amending s. 817.236, F.S.; increasing penalties for false and fraudulent motor vehicle insurance application; creating s. 817.2361, F.S.; prohibiting the creation or use of false or fraudulent motor vehicle insurance cards; providing penalties; amending s. 921.0022, F.S.; revising the offense severity ranking chart of the Criminal Punishment Code to reflect changes in penalties and the creation of additional offenses under the act; providing legislative intent with respect to the retroactive application of certain provisions; repealing s. 456.0375, F.S., relating to the regulation of clinics by the Department of Health; specifying the application of any increase in benefits approved by the Financial Services Commission; providing for application of other provisions of the act; requiring reports; providing an appropriation and authorizing additional positions; repealing of ss. 627.730, 627.731, 627.732, 627.733, 627.734, 627.736, 627.737, 627.739, 627.7401, 627.7403, and 627.7405, F.S., relating to the Florida Motor Vehicle No-Fault Law, unless reenacted by the 2006 Regular Session, and specifying certain effect; authorizing insurers to include in policies a notice of termination relating to such repeal; providing for construction of the act in pari materia with laws enacted during the Regular Session of the Legislature; providing effective dates.

—which was previously considered and amended this day.

Senator Lynn moved the following amendment which was adopted:

Amendment 6 (390888)(with title amendment)—On page 77, between lines 10 and 11, insert:

Section 20. (1) Notwithstanding the amendment to section 627.7295, Florida Statutes, by CS/SB 2364, paragraph (a) of subsection (5) of section 627.7295, Florida Statutes is not amended as provided by that act, but is reenacted to read:

627.7295 Motor vehicle insurance contracts.—

(5)(a) A licensed general lines agent may charge a per-policy fee not to exceed \$10 to cover the administrative costs of the agent associated with selling the motor vehicle insurance policy if the policy covers only personal injury protection coverage as provided by s. 627.736 and property damage liability coverage as provided by s. 627.7275 and if no other insurance is sold or issued in conjunction with or collateral to the policy. The per-policy fee must be a component of the insurer's rate filing and may not be charged by an agent unless the fee is included in the filing. The fee is not considered part of the premium except for purposes of the department's review of expense factors in a filing made pursuant to s. 627.062.

(2) *This section shall take effect upon this act becoming a law, except that, if this act does not become a law before CS/SB 2364 becomes a law, this section shall operate retroactively to the date that CS/SB 2364 becomes a law.*

(Redesignate subsequent sections.)

And the title is amended as follows:

On page 4, line 13, after the semicolon (;) insert: reenacting and amending s. 627.7295(5)(a), F.S., notwithstanding amendments to that paragraph by CS/SB 2364; providing for retroactive application;

On motion by Senator Bennett, the Senate resumed consideration of **Amendment 3 (101982)** which was previously reconsidered this day. **Amendment 3** was withdrawn.

On motion by Senator Alexander, by two-thirds vote **CS for SB 32-A** as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—38

Mr. President	Diaz de la Portilla	Peadar
Alexander	Dockery	Posey
Argenziano	Fasano	Pruitt
Aronberg	Geller	Saunders
Atwater	Haridopolos	Sebesta
Bennett	Hill	Siplin
Bullard	Jones	Smith
Campbell	Klein	Villalobos
Carlton	Lawson	Wasserman Schultz
Clary	Lee	Webster
Constantine	Lynn	Wilson
Cowin	Margolis	Wise
Crist	Miller	

Nays—None

Consideration of **CS for SB 44-A** was deferred.

SB 36-A—A bill to be entitled An act relating to state universities; creating s. 1001.70, F.S.; establishing the Board of Governors; providing membership and terms of office; amending s. 1001.71, F.S.; revising membership of university boards of trustees and terms of office; amending s. 1009.24, F.S.; authorizing a nonrefundable admissions deposit; creating 1012.975, F.S.; defining the terms “cash-equivalent compensation,” “public funds,” and “remuneration”; limiting the annual remuneration of a state university president to \$225,000 from public funds; providing certain limitations on benefits for state university presidents under the Florida Retirement System; authorizing a party to provide cash or cash-equivalent compensation in excess of annual limit from nonpublic funds; eliminating any state obligation to provide cash or cash-equivalent compensation for state university presidents under certain circumstances; providing for construction of the act in pari materia with laws enacted during the Regular Session of the Legislature; providing an effective date.

—was read the second time by title.

The Committee on Education recommended the following amendment which was moved by Senator Constantine:

Amendment 1 (181318)(with title amendment)—On page 5, lines 26-31, delete those lines and insert:

Section 5. Subsection (5) of section 17.076, Florida Statutes, is amended to read:

17.076 Direct deposit of funds.—

(5) All direct deposit records made prior to October 1, 1986, are exempt from the provisions of s. 119.07(1). With respect to direct deposit records made on or after October 1, 1986, the names of the authorized financial institutions and the account numbers of the beneficiaries are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Notwithstanding this exemption and the provisions of s. 119.07(3)(dd), the department may provide a state university, upon request, with that university's employee or vendor direct deposit authorization information on file with the department in order to accommodate the transition to the university accounting system. The

state university shall maintain the confidentiality of all such information provided by the department.

Section 6. Subsection (2) of section 110.161, Florida Statutes, is amended to read:

110.161 State employees; pretax benefits program.—

(2) As used in this section, “employee” means any individual filling an authorized and established position in the executive, legislative, or judicial branch of the state, including the employees of the State Board of Administration and state universities.

Section 7. Subsection (2) of section 112.215, Florida Statutes, is amended to read:

112.215 Government employees; deferred compensation program.—

(2) For the purposes of this section, the term “employee” means any person, whether appointed, elected, or under contract, providing services for the state; any state agency or county or other political subdivision of the state; any municipality; any state university board of trustees; or any constitutional county officer under s. 1(d), Art. VIII of the State Constitution for which compensation or statutory fees are paid.

Section 8. Subsections (1) through (6) of section 287.064, Florida Statutes, are amended to read:

287.064 Consolidated financing of deferred-payment purchases.—

(1) The Division of Bond Finance of the State Board of Administration and the Comptroller shall plan and coordinate deferred-payment purchases made by or on behalf of the state or its agencies or by or on behalf of state universities or state community colleges participating under this section pursuant to s. 1001.74(5) or s. 1001.64(26), respectively. The Division of Bond Finance shall negotiate and the Comptroller shall execute agreements and contracts to establish master equipment financing agreements for consolidated financing of deferred-payment, installment sale, or lease purchases with a financial institution or a consortium of financial institutions. As used in this act, the term “deferred-payment” includes installment sale and lease-purchase.

(a) The period during which equipment may be acquired under any one master equipment financing agreement shall be limited to not more than 3 years.

(b) Repayment of the whole or a part of the funds drawn pursuant to the master equipment financing agreement may continue beyond the period established pursuant to paragraph (a).

(c) The interest rate component of any master equipment financing agreement shall be deemed to comply with the interest rate limitation imposed in s. 287.063 so long as the interest rate component of every interagency, state university, or community college agreement entered into under such master equipment financing agreement complies with the interest rate limitation imposed in s. 287.063. Such interest rate limitation does not apply when the payment obligation under the master equipment financing agreement is rated by a nationally recognized rating service in any one of the three highest classifications, which rating services and classifications are determined pursuant to rules adopted by the Comptroller.

(2) Unless specifically exempted by the Comptroller, all deferred-payment purchases, including those made by a state university or community college that is participating under this section, shall be acquired by funding through master equipment financing agreements. The Comptroller is authorized to exempt any purchases from consolidated financing when, in his or her judgment, alternative financing would be cost-effective or otherwise beneficial to the state.

(3) The Comptroller may require agencies to enter into interagency agreements and may require participating state universities or community colleges to enter into systemwide agreements for the purpose of carrying out the provisions of this act.

(a) The term of any interagency or systemwide agreement shall expire on June 30 of each fiscal year but shall automatically be renewed annually subject to appropriations and deferred-payment schedules. The period of any interagency or systemwide agreement shall not exceed

the useful life of the equipment for which the agreement was made as determined by the Comptroller.

(b) The interagency or systemwide agreements may include, but are not limited to, equipment costs, terms, and a pro rata share of program and issuance expenses.

(4) Each *state university* or community college may choose to have its purchasing agreements involving administrative and instructional materials consolidated under this section.

(5) The Comptroller is authorized to automatically debit each agency's or *state university's* funds and each community college's portion of the Community College Program Fund consistently with the deferred-payment schedules.

(6) There is created the Consolidated Payment Trust Fund in the Comptroller's office for the purpose of implementing the provisions of this act. All funds debited from each agency, *state university*, and each community college may be deposited in the trust fund and shall be used to meet the financial obligations incurred pursuant to this act. Any income from the investment of funds may be used to fund administrative costs associated with this program.

Section 9. Subsection (6) of section 440.38, Florida Statutes, is amended to read:

440.38 Security for compensation; insurance carriers and self-insurers.—

(6) The state and its boards, bureaus, departments, and agencies and all of its political subdivisions which employ labor, *and the state universities*, shall be deemed self-insurers under the terms of this chapter, unless they elect to procure and maintain insurance to secure the benefits of this chapter to their employees; and they are hereby authorized to pay the premiums for such insurance.

Section 10. Subsection (19) of section 1001.74, Florida Statutes, is amended to read:

1001.74 Powers and duties of university boards of trustees.—

(19) Each board of trustees shall establish the personnel program for all employees of the university, including the president, pursuant to the provisions of chapter 1012 and, in accordance with rules and guidelines of the State Board of Education, including: compensation and other conditions of employment, recruitment and selection, nonreappointment, standards for performance and conduct, evaluation, benefits and hours of work, leave policies, recognition and awards, inventions and works, travel, learning opportunities, exchange programs, academic freedom and responsibility, promotion, assignment, demotion, transfer, tenure and permanent status, ethical obligations and conflicts of interest, restrictive covenants, disciplinary actions, complaints, appeals and grievance procedures, and separation and termination from employment. The Department of Management Services shall retain authority over state university employees for programs established in ss. 110.123, 110.1232, 110.1234, ~~and~~ 110.1238, *and 110.161* and in chapters 121, 122, and 238.

Section 11. Paragraphs (a) and (b) of subsection (2) of section 1009.21, Florida Statutes, are amended, and paragraph (d) is added to said subsection, to read:

1009.21 Determination of resident status for tuition purposes.—Students shall be classified as residents or nonresidents for the purpose of assessing tuition in community colleges and state universities.

(2)(a) To qualify as a resident for tuition purposes:

1. A person or, if that person is a dependent child, his or her parent or parents must have established legal residence in this state and must have maintained legal residence in this state for at least 12 months immediately prior to his or her *initial enrollment at a Florida postsecondary educational institution. For purposes of this section, the term "initial enrollment" is defined as the first day of class* ~~qualification~~.

2. Every applicant for admission to an institution of higher education shall be required to make a statement as to his or her length of residence in the state and, further, shall establish that his or her presence or, if the applicant is a dependent child, the presence of his or her

parent or parents in the state currently is, and during the requisite 12-month qualifying period was, for the purpose of maintaining a bona fide domicile, rather than for the purpose of maintaining a mere temporary residence or abode incident to enrollment in an institution of higher education.

(b) However, with respect to a dependent child living with an adult relative other than the child's parent, such child may qualify as a resident for tuition purposes if the adult relative is a legal resident who has maintained legal residence in this state for at least 12 months immediately prior to the child's *initial enrollment at a Florida postsecondary educational institution qualification*, provided the child has resided continuously with such relative for the 5 years immediately prior to the child's *initial enrollment qualification*, during which time the adult relative has exercised day-to-day care, supervision, and control of the child.

(d) *A person who is classified as a nonresident for tuition purposes may become eligible for reclassification as a resident for tuition purposes if that person, or if that person is a dependent child, his or her parent, presents documentation that supports permanent residency in this state, such as documentation of permanent full-time employment for the previous 12 months or the purchase of a home in this state and residence therein for the prior 12 months.*

Section 12. Effective upon this act becoming a law and applicable retroactive to January 7, 2003, section 1010.10, Florida Statutes, is created to read:

1010.10 Florida Uniform Management of Institutional Funds Act.—

(1) *SHORT TITLE.*—This section may be cited as the "Florida Uniform Management of Institutional Funds Act."

(2) *DEFINITIONS.*—As used in this section, the term:

(a) "Endowment fund" means an institutional fund, or any part thereof, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument.

(b) "Governing board" means the body responsible for the management of an institution or of an institutional fund.

(c) "Institution" means an incorporated or unincorporated organization organized and operated exclusively for the advancement of educational purposes, or a governmental entity to the extent that it holds funds exclusively for educational purposes.

(d) "Institutional fund" means a fund held by an institution for its exclusive use, benefit, or purposes. The term excludes a fund held for an institution by a trustee that is not an institution. The term also excludes a fund in which a beneficiary that is not an institution has an interest, other than possible rights that could arise upon violation or failure of the purposes of the fund.

(e) "Instrument" means a will; deed; grant; conveyance; agreement; memorandum; electronic record; writing; or other governing document, including the terms of any institutional solicitations from which an institutional fund resulted, under which property is transferred to or held by an institution as an institutional fund.

(3) *EXPENDITURE OF ENDOWMENT FUNDS.*—

(a) A governing board may expend so much of an endowment fund as the governing board determines to be prudent for the uses and purposes for which the endowment fund is established, consistent with the goal of conserving the purchasing power of the endowment fund. In making its determination the governing board shall use reasonable care, skill, and caution in considering the following:

1. The purposes of the institution;
2. The intent of the donors of the endowment fund;
3. The terms of the applicable instrument;
4. The long-term and short-term needs of the institution in carrying out its purposes;
5. The general economic conditions;

6. *The possible effect of inflation or deflation;*
7. *The other resources of the institution; and*
8. *Perpetuation of the endowment.*

Expenditures made under this paragraph will be considered prudent if the amount expended is consistent with the goal of preserving the purchasing power of the endowment fund.

(b) *A restriction upon the expenditure of an endowment fund may not be implied from a designation of a gift as an endowment or from a direction or authorization in the instrument to use only "income," "interest," "dividends," or "rents, issues or profits," or "to preserve the principal intact," or words of similar import.*

(c) *The provisions of paragraph (a) shall not apply to instruments if the instrument so indicates by stating, "I direct that the expenditure provision of paragraph (a) of subsection (3) of the Florida Uniform Management of Institutional Funds Act not apply to this gift" or words of similar import.*

(d) *This subsection does not limit the authority of a governing board to expend funds as permitted under other law, the terms of the instrument, or the charter of the institution.*

(e) *Except as otherwise provided, this subsection applies to instruments executed or in effect before or after the effective date of this section.*

(4) STANDARD OF CONDUCT.—

(a) *Members of a governing board shall invest and manage an institutional fund as a prudent investor would, by considering the purposes, distribution requirements, and other circumstances of the fund. In satisfying this standard, the governing board shall exercise reasonable care, skill, and caution.*

(b) *A governing board's investment and management decisions about individual assets shall be made not in isolation but in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy that provides risk and return objectives reasonably suited to the fund and to the institution.*

(c) *Among circumstances that a governing board shall consider are:*

1. *Long-term and short-term needs of the institution in carrying out its purposes;*
2. *Its present and anticipated financial resources;*
3. *General economic conditions;*
4. *The possible effect of inflation or deflation;*
5. *The expected tax consequences, if any, of investment decisions or strategies;*
6. *The role that each investment or course of action plays within the overall investment portfolio of the institutional fund;*
7. *The expected total return from income and the appreciation of its investments;*
8. *Other resources of the institution;*
9. *The needs of the institution and the institutional fund for liquidity, regularity of income, and preservation or appreciation of capital; and*
10. *An asset's special relationship or special value, if any, to the purposes of the applicable gift instrument or to the institution.*

(d) *A governing board shall make a reasonable effort to verify the facts relevant to the investment and management of institutional fund assets.*

(e) *A governing board shall diversify the investments of an institutional fund unless the board reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversifying.*

(f) *A governing board shall invest and manage the assets of an institutional fund solely in the interest of the institution.*

(5) **INVESTMENT AUTHORITY.**—*In addition to an investment otherwise authorized by law or by the applicable gift instrument, and without restriction to investments a fiduciary may make, the governing board, subject to any specific limitations in the applicable gift instrument or in the applicable law, other than law relating to investments by a fiduciary:*

(a) *Within a reasonable time after receiving property, shall review the property and make and implement decisions concerning the retention and disposition of the assets, in order to bring the portfolio of the institutional fund into compliance with the purposes, terms, distribution requirements, and other circumstances of the institution, and with the requirements of this section;*

(b) *May invest in any kind of property or type of investment consistent with the standards of this section;*

(c) *May include all or any part of an institutional fund in any pooled or common fund maintained by the institution; and*

(d) *May invest all or any part of the institutional fund in any other pooled or common fund available for investment, including shares or interests in regulated investment companies, mutual funds, common trust funds, investment partnerships, real estate investment trusts, or similar organizations in which funds are commingled and investment determinations are made by persons other than the governing board.*

(6) DELEGATION OF INVESTMENT MANAGEMENT.—

(a) *Except as otherwise provided by applicable law relating to governmental institutions or funds, a governing board may delegate investment and management functions that a prudent governing body could properly delegate under the circumstances. A governing board shall exercise reasonable care, skill, and caution in:*

1. *Selecting an agent;*
2. *Establishing the scope and terms of the delegation, consistent with the purposes of the institutional fund; and*
3. *Periodically reviewing the agent's actions to monitor the agent's performance and the agent's compliance with the terms of the delegation.*

(b) *In performing a delegated function, an agent owes a duty to the governing board to exercise reasonable care to comply with the terms of the delegation.*

(c) *The members of a governing board who comply with the requirements of paragraph (a) are not liable for the decisions or actions of the agent to whom the function was delegated.*

(d) *By accepting the delegation of an investment or management function from a governing board of an institution that is subject to the laws of this state, an agent submits to the jurisdiction of the courts of this state in all actions arising from the delegation.*

(7) **INVESTMENT COSTS.**—*In investing and managing trust assets, a governing board may only incur costs that are appropriate and reasonable in relation to the assets and the purposes of the institution.*

(8) RELEASE OF RESTRICTIONS ON USE OR INVESTMENT.—

(a) *With the written consent of the donor, a governing board may release, in whole or in part, a restriction imposed by the applicable instrument on the use or investment of an institutional fund.*

(b) *If written consent of the donor cannot be obtained by reason of the donor's death, disability, unavailability, or impossibility of identification, a governing board may release, in whole or in part, a restriction imposed by the applicable instrument on the use or investment of an institutional fund if the fund has a total value of less than \$100,000 and if the governing board, in its fiduciary judgment, concludes that the value of the fund is insufficient to justify the cost of administration as a separate institutional fund.*

(c) *If written consent of the donor cannot be obtained by reason of the donor's death, disability, unavailability, or impossibility of identification, a governing board may apply in the name of the institution to the*

circuit court of the county in which the institution is located for release of a restriction imposed by the applicable instrument on the use or investment of an institutional fund. The Attorney General shall be notified of the application and shall be given an opportunity to be heard. If the court finds that the restriction is unlawful, impracticable, impossible to achieve, or wasteful, it may by order release the restriction in whole or in part. A release under this subsection may not change an endowment fund to a fund that is not an endowment fund.

(d) A release under this subsection may not allow a fund to be used for purposes other than the educational purposes of the institution affected.

(e) This subsection does not limit the application of the doctrine of cy pres.

(9) **UNIFORMITY OF APPLICATION AND CONSTRUCTION.**—This act shall be applied and construed so as to effectuate its general purpose to make uniform the law with respect to the subject of this act among those states which enact it.

Section 13. Section 1011.94, Florida Statutes, is amended to read:

1011.94 Trust Fund for University Major Gifts.—

(1) There is established a Trust Fund for University Major Gifts. The purpose of the trust fund is to enable each university and New College to provide donors with an incentive in the form of matching grants for donations for the establishment of permanent endowments and sales tax exemption matching funds received pursuant to s. 212.08(5)(j), which must be invested, with the proceeds of the investment used to support university priorities as established by the university board of trustees libraries and instruction and research programs, as defined by the State Board of Education. All funds appropriated for the challenge grants, new donors, major gifts, sales tax exemption matching funds pursuant to s. 212.08(5)(j), or eminent scholars program must be deposited into the trust fund and invested pursuant to s. 18.125 until the Board of Governors State Board of Education allocates the funds to universities to match private donations. Notwithstanding s. 216.301 and pursuant to s. 216.351, any undisbursed balance remaining in the trust fund and interest income accruing to the portion of the trust fund which is not matched and distributed to universities must remain in the trust fund and be used to increase the total funds available for challenge grants. Funds deposited in the trust fund for the sales tax exemption matching program authorized in s. 212.08(5)(j), and interest earnings thereon, shall be maintained in a separate account within the Trust Fund for University Major Gifts, and may be used only to match qualified sales tax exemptions that a certified business designates for use by state universities and community colleges to support research and development projects requested by the certified business. The Board of Governors State Board of Education may authorize any university to encumber the state matching portion of a challenge grant from funds available under s. 1011.45.

(2) The Board of Governors State Board of Education shall specify the process for submission, documentation, and approval of requests for matching funds, accountability for endowments and proceeds of endowments, allocations to universities, restrictions on the use of the proceeds from endowments, and criteria used in determining the value of donations.

(3)(a) The Board of Governors State Board of Education shall allocate the amount appropriated to the trust fund to each university and New College based on the amount of the donation and the restrictions applied to the donation.

(b) Donations for a specific purpose must be matched in the following manner:

1. Each university that raises at least \$100,000 but no more than \$599,999 from a private source must receive a matching grant equal to 50 percent of the private contribution.

2. Each university that raises a contribution of at least \$600,000 but no more than \$1 million from a private source must receive a matching grant equal to 70 percent of the private contribution.

3. Each university that raises a contribution in excess of \$1 million but no more than \$1.5 million from a private source must receive a matching grant equal to 75 percent of the private contribution.

4. Each university that raises a contribution in excess of \$1.5 million but no more than \$2 million from a private source must receive a matching grant equal to 80 percent of the private contribution.

5. Each university that raises a contribution in excess of \$2 million from a private source must receive a matching grant equal to 100 percent of the private contribution.

6. The amount of matching funds used to match a single gift in any given year shall be limited to \$3 million. The total amount of matching funds available for any single gift shall be limited to \$15 million, to be distributed in equal amounts of \$3 million per year over a period of 5 years.

(c) The Board of Governors State Board of Education shall encumber state matching funds for any pledged contributions, pro rata, based on the requirements for state matching funds as specified for the particular challenge grant and the amount of the private donations actually received by the university for the respective challenge grant.

(4) Matching funds may be provided for contributions encumbered or pledged under the Eminent Scholars Act prior to July 1, 1994, and for donations or pledges of any amount equal to or in excess of the prescribed minimums which are pledged for the purpose of this section.

(5)(a) Each university foundation and New College Foundation shall establish a challenge grant account for each challenge grant as a depository for private contributions and state matching funds to be administered on behalf of the Board of Governors State Board of Education, the university, or New College. State matching funds must be transferred to a university foundation or New College Foundation upon notification that the university or New College has received and deposited the amount specified in this section in a foundation challenge grant account.

(b) The foundation serving a university and New College Foundation each has the responsibility for the maintenance and investment of its challenge grant account and for the administration of the program on behalf of the university or New College, pursuant to procedures specified by the Board of Governors State Board of Education. Each foundation shall include in its annual report to the Board of Governors State Board of Education information concerning collection and investment of matching gifts and donations and investment of the account.

(c) A donation of at least \$600,000 and associated state matching funds may be used to designate an Eminent Scholar Endowed Chair pursuant to procedures specified by the Board of Governors State Board of Education.

(6) The donations, state matching funds, or proceeds from endowments established under this section may not be expended for the construction, renovation, or maintenance of facilities or for the support of intercollegiate athletics.

Section 14. If any law that is amended by this act was also amended by a law enacted at the 2003 Regular Session of the Legislature, such laws shall be construed as if they had been enacted during the same session of the Legislature, and full effect should be given to each if that is possible.

Section 15. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2003.

And the title is amended as follows:

On page 1, lines 22-25, delete those lines and insert: circumstances; amending s. 17.076, F.S.; providing an exception to a public records exemption; amending s. 110.161, F.S.; including employees of state universities in the definition of "employee" for purposes of the pretax benefits program; amending s. 112.215, F.S.; including employees of state university boards of trustees in the definition of "employee" for purposes of the deferred compensation program; amending s. 287.064, F.S.; authorizing state universities to continue to participate in the consolidated equipment financing program; amending s. 440.38, F.S.; including state universities as self-insurers for purposes of workers' compensation; amending s. 1001.74, F.S.; adding a cross-reference relating to pretax benefits for state university employees; amending s. 1009.21, F.S.; revising provisions relating to determination of resident status for tuition purposes; providing for reclassification; creating s. 1010.10, F.S.; creating the Florida Uniform Management of Institutional Funds Act; provid-

ing definitions; providing for expenditure of endowment funds by a governing board; providing for a standard of conduct; providing investment authority; providing for delegation of investment management; providing for investment costs; providing for uniformity of application and construction; amending s. 1011.94, F.S., relating to the Trust Fund for University Major Gifts; revising provisions relating to use of proceeds; replacing references to State Board of Education with Board of Governors; providing limitations on matching funds; providing for construction of the act in pari materia with laws enacted during the Regular Session of the Legislature; providing an effective date.

On motion by Senator Constantine, further consideration of **SB 36-A** with pending **Amendment 1 (181318)** was deferred.

On motion by Senator Webster—

SB 38-A—A bill to be entitled An act relating to charter schools; amending s. 1002.33, F.S.; providing guiding principles; requiring an emphasis on reading; requiring certain accountability measures; authorizing community colleges to develop charter schools; revising application requirements; requiring fiscal projections in a charter application; extending the time allowed for the State Board of Education to act on an appeal; requiring auditors to provide notification of certain financial conditions; providing additional requirements for a charter school's annual report; eliminating limitations on the number of charter schools per school district; revising administrative fees charged by the sponsor for the provision of services; providing a report to the Governor; amending s. 1002.32, F.S.; correcting a cross-reference; providing exceptions to the one lab school per university limitation; revising provisions relating to funding for lab schools; revising provisions relating to employees of lab schools; amending s. 1011.68, F.S.; correcting a cross-reference; amending s. 1013.62, F.S.; revising eligibility criteria for charter school capital outlay funding; revising purposes for charter school capital outlay funds; providing allocation criteria for charter school capital outlay appropriations; providing for construction of the act in pari materia with laws enacted during the Regular Session of the Legislature; providing an effective date.

—was read the second time by title.

Pursuant to Rule 4.19, **SB 38-A** was placed on the calendar of Bills on Third Reading.

RECESS

The President declared the Senate in recess at 3:55 p.m. to reconvene at 4:05 p.m.

EVENING SESSION

The Senate was called to order by the President at 4:31 p.m. A quorum present—38:

Mr. President	Diaz de la Portilla	Peadar
Alexander	Dockery	Posey
Argenziano	Fasano	Pruitt
Aronberg	Geller	Saunders
Atwater	Haridopolos	Sebesta
Bennett	Hill	Siplin
Bullard	Jones	Smith
Campbell	Klein	Villalobos
Carlton	Lawson	Wasserman Schultz
Clary	Lee	Webster
Constantine	Lynn	Wilson
Cowin	Margolis	Wise
Crist	Miller	

SPECIAL ORDER CALENDAR, Continued

On motion by Senator Constantine, the Senate resumed consideration of—

SB 36-A—A bill to be entitled An act relating to state universities; creating s. 1001.70, F.S.; establishing the Board of Governors; providing membership and terms of office; amending s. 1001.71, F.S.; revising

membership of university boards of trustees and terms of office; amending s. 1009.24, F.S.; authorizing a nonrefundable admissions deposit; creating 1012.975, F.S.; defining the terms “cash-equivalent compensation,” “public funds,” and “remuneration”; limiting the annual remuneration of a state university president to \$225,000 from public funds; providing certain limitations on benefits for state university presidents under the Florida Retirement System; authorizing a party to provide cash or cash-equivalent compensation in excess of annual limit from nonpublic funds; eliminating any state obligation to provide cash or cash-equivalent compensation for state university presidents under certain circumstances; providing for construction of the act in pari materia with laws enacted during the Regular Session of the Legislature; providing an effective date.

—which was previously considered this day. Pending **Amendment 1 (181318)** by the Committee on Education was adopted.

Pursuant to Rule 4.19, **SB 36-A** as amended was ordered engrossed and then placed on the calendar of Bills on Third Reading.

On motion by Senator Diaz de la Portilla, by two-thirds vote—

CS for SB 44-A—A bill to be entitled An act relating to the Florida Clean Indoor Air Act; implementing s. 20, Art. X of the State Constitution; reenacting s. 386.201, F.S., relating to a short title; amending s. 386.202, F.S.; providing legislative intent and findings; amending s. 386.203, F.S.; providing definitions; amending s. 386.204, F.S.; prohibiting smoking in certain places; creating s. 386.2045, F.S.; establishing specific exceptions where smoking is permitted; amending s. 386.205, F.S.; providing for designated smoking rooms; providing certain exceptions; requiring state agencies to adopt rules; amending s. 386.206, F.S.; providing requirements for the posting of signs in rooms designated as smoking rooms; amending s. 386.207, F.S.; providing for enforcement of the act by the Department of Business and Professional Regulation and the Department of Health; providing penalties; providing for the use of moneys collected as fines under the act; amending s. 386.208, F.S.; providing penalties; reenacting s. 386.209, F.S., relating to preemption by the state of the regulation of smoking; amending s. 386.211, F.S.; providing for announcements at certain facilities; amending s. 386.212, F.S.; prohibiting smoking near school property; creating s. 386.2125, F.S.; requiring the Department of Health and the Department of Business and Professional Regulation to adopt rules; providing for construction of the act in pari materia with laws enacted during the Regular Session of the Legislature; providing for severability; providing an effective date.

—was read the second time by title.

Senator Diaz de la Portilla moved the following amendments which were adopted:

Amendment 1 (394004)—On page 2, line 9 through page 7, line 4, delete those lines and insert:

Section 1. Section 386.201, Florida Statutes, is amended to read:

386.201 *Popular name* ~~Short title~~.—This part may be cited by the popular name as the “Florida Clean Indoor Air Act.”

Section 2. Section 386.202, Florida Statutes, is amended to read:

386.202 *Legislative intent*.—The purpose of this part is to protect people from the public health hazards of second-hand, comfort, and environment by creating areas in public places and at public meetings that are reasonably free from tobacco smoke and to implement the Florida health initiative in s. 20, Art. X of the State Constitution by providing a uniform statewide maximum code. It is the intent of the Legislature to not inhibit, or otherwise obstruct, medical or scientific research or smoking-cessation programs approved by the Department of Health. This part shall not be interpreted to require the designation of smoking areas. However, it is the intent of the Legislature to discourage the designation of any area within a government building as a smoking area.

Section 3. Section 386.203, Florida Statutes, is amended to read:

386.203 *Definitions*.—As used in this part:

(1) “Commercial” use of a private residence means any time during which the owner, lessee, or other person occupying or controlling the use

of the private residence is furnishing in the private residence, or causing or allowing to be furnished in the private residence, child care, adult care, or health care, or any combination thereof, and receiving or expecting to receive compensation therefor.

(2) "Common area" means a hallway, corridor, lobby, aisle, water fountain area, restroom, stairwell, entryway, or conference room in a customs area of an airport terminal under the authority and control of the Bureau of Customs and Border Protection of the United States Department of Homeland Security.

(3) "Department" means the Department of Health.

(4) "Designated smoking guest rooms at public lodging establishments" means the sleeping rooms and directly associated private areas, such as bathrooms, living rooms, and kitchen areas, if any, rented to guests for their exclusive transient occupancy in public lodging establishments, including hotels, motels, resort condominiums, transient apartments, transient lodging establishments, rooming houses, boarding houses, resort dwellings, bed and breakfast inns, and the like; and designated by the person or persons having management authority over such public lodging establishment as rooms in which smoking may be permitted.

(5) "Enclosed indoor workplace" means any place where one or more persons engages in work, and which place is predominantly or totally bounded on all sides and above by physical barriers, regardless of whether such barriers consist of or include, without limitation, uncovered openings, screened or otherwise partially covered openings; or open or closed windows, shutters, doors, or the like. A place is "predominantly" bounded by physical barriers during any time when both of the following conditions exist:

(a) It is more than 50 percent covered from above by a physical barrier that excludes rain, and

(b) More than 50 percent of the combined surface area of its sides is covered by closed physical barriers. In calculating the percentage of side surface area covered by closed physical barriers, all solid surfaces that block air flow, except railings, must be considered as closed physical barriers. This section applies to all such enclosed indoor workplaces and enclosed parts thereof without regard to whether work is occurring at any given time.

(c) The term does not include any facility owned or leased by and used exclusively for noncommercial activities performed by the members and guests of a membership association, including social gatherings, meetings, dining, and dances, if no person or persons are engaged in work as defined in subsection (12).

(6) "Essential services" means those services that are essential to the maintenance of any enclosed indoor room, including, but not limited to, janitorial services, repairs, or renovations.

(7) "Physical barrier" includes an uncovered opening, a screened or otherwise partially covered opening, or an open or closed window, shutter, or door.

(8) "Retail tobacco shop" means any enclosed indoor workplace dedicated to or predominantly for the retail sale of tobacco, tobacco products, and accessories for such products, in which the sale of other products or services is merely incidental. Any enclosed indoor workplace of a business that manufactures, imports, or distributes tobacco products or of a tobacco leaf dealer is a business dedicated to or predominantly for the retail sale of tobacco and tobacco products when, as a necessary and integral part of the process of making, manufacturing, importing, or distributing a tobacco product for the eventual retail sale of such tobacco or tobacco product, tobacco is heated, burned, or smoked or a lighted tobacco product is tested.

(9) "Second-hand smoke," also known as environmental tobacco smoke (ETS), means smoke emitted from lighted, smoldering, or burning tobacco when the smoker is not inhaling; smoke emitted at the mouthpiece during puff drawing; and smoke exhaled by the smoker.

(10)(4) "Smoking" means inhaling, exhaling, burning, carrying, or possessing any possession of a lighted tobacco product, including cigarettes, cigars, pipe tobacco, and cigarette, lighted cigar, lighted pipe, or any other lighted tobacco product.

(11) "Stand-alone bar" means any licensed premises devoted during any time of operation predominantly or totally to serving alcoholic beverages, intoxicating beverages, or intoxicating liquors, or any combination thereof, for consumption on the licensed premises; in which the serving of food, if any, is merely incidental to the consumption of any such beverage; and the licensed premises is not located within, and does not share any common entryway or common indoor area with, any other enclosed indoor workplace, including any business for which the sale of food or any other product or service is more than an incidental source of gross annual revenue. A place of business constitutes a stand-alone bar in which the service of food is merely incidental in accordance with this subsection if the licensed premises derives no more than 10 percent of its annual gross revenue from the sale of food consumed on the licensed premises.

(12) "Work" means any person's providing any employment or employment-type service for or at the request of another individual or individuals or any public or private entity, whether for compensation or not, whether full or part time, whether legally or not. "Work" includes, without limitation, any such service performed by an employee, independent contractor, agent, partner, proprietor, manager, officer, director, apprentice, trainee, associate, servant, volunteer, and the like. The term does not include noncommercial activities performed by members of a membership association.

(13) "Membership association" means a charitable, nonprofit, or veterans' organization that holds a current exemption under s. 501(c)(3), s. 501(c)(4), s. 501(c)(7), s. 501(c)(8), s. 501(c)(10), s. 501(c)(19), or s. 501(d) of the Internal Revenue Code.

(1) "Public place" means the following enclosed, indoor areas used by the general public:

(a) Government buildings;

(b) Public means of mass transportation and their associated terminals not subject to federal smoking regulation;

(c) Elevators;

(d) Hospitals;

(e) Nursing homes;

(f) Educational facilities;

(g) Public school buses;

(h) Libraries;

(i) Courtrooms;

(j) Jury waiting and deliberation rooms;

(k) Museums;

(l) Theaters;

(m) Auditoriums;

(n) Arenas;

(o) Recreational facilities;

(p) Restaurants;

(q) Retail stores, except a retail store the primary business of which is the sale of tobacco or tobacco-related products;

(r) Grocery stores;

(s) Places of employment;

(t) Health care facilities;

(u) Day care centers; and

(v) Common areas of retirement homes and condominiums.

(2) "Government building" means any building or any portion of any building owned by or leased to the state or any political subdivision thereof and used for governmental purposes.

(3) ~~“Public meeting” means all meetings open to the public, including meetings of homeowner, condominium, or renter or tenant associations unless such meetings are held in a private residence.~~

(5) ~~“Smoking area” means any designated area meeting the requirements of ss. 386.205 and 386.206.~~

(6) ~~“Common area” means any hallway, corridor, lobby, aisle, water fountain area, restroom, stairwell, entryway, or conference room in any public place.~~

(7) ~~“Department” means the Department of Health.~~

(8) ~~“Division” means the Division of Hotels and Restaurants of the Department of Business and Professional Regulation.~~

Amendment 2 (815706)(with title amendment)—On page 7, line 5 through page 11, line 31, delete those lines and insert:

Section 4. Section 386.204, Florida Statutes, is amended to read:

386.204 **Prohibition.**—A person may not smoke in an enclosed indoor workplace, except as otherwise provided in s. 386.2045 a public place or at a public meeting except in designated smoking areas. These prohibitions do not apply in cases in which an entire room or hall is used for a private function and seating arrangements are under the control of the sponsor of the function and not of the proprietor or person in charge of the room or hall.

Section 5. Section 386.2045, Florida Statutes, is created to read:

386.2045 **Enclosed indoor workplaces; specific exceptions.**—Notwithstanding s. 386.204, tobacco smoking may be permitted in each of the following places:

(1) **PRIVATE RESIDENCE.**—A private residence whenever it is not being used commercially to provide child care, adult care, or health care, or any combination thereof as defined in s. 386.203(1).

(2) **RETAIL TOBACCO SHOP.**—An enclosed indoor workplace dedicated to or predominantly for the retail sale of tobacco, tobacco products, and accessories for such products, as defined in s. 386.203(8).

(3) **DESIGNATED SMOKING GUEST ROOM.**—A designated smoking guest room at a public lodging establishment as defined in s. 386.203(4).

(4) **STAND-ALONE BAR.**—A business that meets the definition of a stand-alone bar as defined in s. 386.203(11) and that otherwise complies with all applicable provisions of the Beverage Law and part II of this chapter.

(5) **SMOKING-CESSATION PROGRAM, MEDICAL OR SCIENTIFIC RESEARCH.**—An enclosed indoor workplace, to the extent that tobacco smoking is an integral part of a smoking-cessation program approved by the department, or medical or scientific research conducted therein. Each room in which tobacco smoking is permitted must comply with the signage requirements in s. 386.206.

(6) **CUSTOMS SMOKING ROOM.**—A customs smoking room in an airport in-transit lounge under the authority and control of the Bureau of Customs and Border Protection of the United States Department of Homeland Security subject to the restrictions contained in s. 386.205.

Section 6. Section 386.205, Florida Statutes, is amended to read:

386.205 **Customs Designation of smoking rooms areas.**—

(1) A customs smoking room areas may be designated by the person in charge of an airport in-transit lounge under the authority and control of the Bureau of Customs and Border Protection of the United States Department of Homeland Security a public place. A customs smoking room may only be designated in an airport in-transit lounge under the authority and control of the Bureau of Customs and Border Protection of the United States Department of Homeland Security. A customs smoking room may not be designated in an elevator, restroom, or any common area as defined by s. 386.203. Each customs smoking room must conform to the following requirements:

(a) Work, other than essential services defined in s. 386.203(6), must not be performed in the room at any given time.

(b) Tobacco smoking must not be permitted in the room while any essential services are being performed in the room.

(c) Each customs smoking room must be enclosed by physical barriers that are impenetrable by second-hand tobacco smoke and prevent the escape of second-hand tobacco smoke into the enclosed indoor workplace.

(d) Each customs smoking room must exhaust tobacco smoke directly to the outside and away from air intake ducts, and be maintained under negative pressure, with respect to surrounding spaces, sufficient to contain tobacco smoke within the room.

(e) Each customs smoking room must comply with the signage requirements in s. 386.206. If a smoking area is designated, existing physical barriers and ventilation systems shall be used to minimize smoke in adjacent nonsmoking areas. This provision shall not be construed to require fixed structural or other physical modifications in providing these areas or to require operation of any existing heating, ventilating, and air conditioning system (HVAC system) in any manner which decreases its energy efficiency or increases its electrical demand, or both, nor shall this provision be construed to require installation of new or additional HVAC systems.

(2)(a) A smoking area may not be designated in an elevator, school bus, public means of mass transportation subject only to state smoking regulation, restroom, hospital, doctor's or dentist's waiting room, jury deliberation room, county health department, day care center, school or other educational facility, or any common area as defined in s. 386.203. However, a patient's room in a hospital, nursing home, or other health care facility may be designated as a smoking area if such designation is ordered by the attending physician and agreed to by all patients assigned to that room.

(b) Notwithstanding anything in this part to the contrary, no more than one-half of the rooms in any health care facility may be designated as smoking areas.

(3) In a workplace where there are smokers and nonsmokers, employers shall develop, implement, and post a policy regarding designation of smoking and nonsmoking areas. Such a policy shall take into consideration the proportion of smokers and nonsmokers. Employers who make reasonable efforts to develop, implement, and post such a policy shall be deemed in compliance. An entire area may be designated as a smoking area if all workers routinely assigned to work in that area at the same time agree. With respect to the square footage in any public place as described in subsection (4), this square footage shall not include private office work space which is not a common area as defined in s. 386.203(6) and which is ordinarily inaccessible to the public.

(4)(a) No more than one-half of the total square footage in any public place within a single enclosed indoor area used for a common purpose shall be reserved and designated as a smoking area.

(b) The square footage limitation set forth in paragraph (a) shall not apply to any restaurant subject to this part. With respect to such restaurants:

1. No more than 50 percent of the seats existing in a restaurant's dining room at any time shall be located in an area designated as a smoking area.

2. Effective October 1, 2001, no more than 35 percent of the seats existing in a restaurant's dining room at any time shall be located in an area designated as a smoking area.

(5) A smoking area may not contain common areas which are expected to be used by the public.

(6) Each state agency may adopt rules for administering this section which take into consideration the provisions of this part.

And the title is amended as follows:

On page 1, lines 13 and 14, delete those lines and insert: smoking rooms in airport in-transit lounges;

Amendment 3 (624554)(with title amendment)—On page 12, line 1 thorough page 16, line 7, delete those lines and insert:

Section 7. Section 386.206, Florida Statutes, is amended to read:

386.206 Posting of signs; requiring policies.—

(1) The person in charge of an enclosed indoor workplace that prior to adoption of s. 20, Art. X of the State Constitution was required to post signs under the requirements of this section must continue to a public place shall conspicuously post, or cause to be posted, in any area designated as a smoking area signs stating that smoking is not permitted in the enclosed indoor workplace such area. Each sign posted pursuant to this section must have letters of reasonable size which can be easily read. The color, design, and precise place of posting of such signs shall be left to the discretion of the person in charge of the premises. In order to increase public awareness, the person in charge of a public place may, at his or her discretion, also post “NO SMOKING EXCEPT IN DESIGNATED AREAS” signs as appropriate.

(2) The proprietor or other person in charge of an enclosed indoor workplace must develop and implement a policy regarding the smoking prohibitions established in this part. The policy may include, but is not limited to, procedures to be taken when the proprietor or other person in charge witnesses or is made aware of a violation of s. 386.204 in the enclosed indoor workplace and must include a policy which prohibits an employee from smoking in the enclosed indoor workplace. In order to increase public awareness, the person in charge of a enclosed indoor workplace may, at his or her discretion, post “NO SMOKING” signs as deemed appropriate.

(3) The person in charge of an airport terminal that includes a designated customs smoking room must conspicuously post, or cause to be posted, signs stating that no smoking is permitted except in the designated customs smoking room located in the customs area of the airport. Each sign posted pursuant to this section must have letters of reasonable size that can be easily read. The color, design, and precise locations at which such signs are posted shall be left to the discretion of the person in charge of the premises.

(4) The proprietor or other person in charge of an enclosed indoor workplace where a smoking cessation program, medical research, or scientific research is conducted or performed must conspicuously post, or cause to be posted, signs stating that smoking is permitted for such purposes in designated areas in the enclosed indoor workplace. Each sign posted pursuant to this section must have letters of reasonable size which can be easily read. The color, design, and precise locations at which such signs are posted shall be left to the discretion of the person in charge of the premises.

(5) The provisions of subsection (1) shall expire on July 1, 2005.

Section 8. Section 386.207, Florida Statutes, is amended to read:

386.207 Administration; enforcement; civil penalties; exemptions.—

(1) The department and the Department of Business and Professional Regulation or the division shall enforce this part ss. 386.205 and 386.206 and to implement such enforcement shall adopt, in consultation with the State Fire Marshal, rules specifying procedures to be followed by enforcement personnel in investigating complaints and notifying alleged violators, rules defining types of cases for which exemptions may be granted, and rules specifying procedures by which appeals may be taken by aggrieved parties.

(2) Public agencies responsible for the management and maintenance of government buildings shall report observed violations to the department and the Department of Business and Professional Regulation or division. The State Fire Marshal shall report to the department and the Department of Business and Professional Regulation or division observed violations of this part ss. 386.205 and 386.206 found during its periodic inspections conducted under pursuant to its regulatory authority. The department and the Department of Business and Professional Regulation or the division, upon notification of observed violations of this part ss. 386.205 and 386.206, shall issue to the proprietor or other person in charge of such enclosed indoor workplace public place a notice to comply with this part ss. 386.205 and 386.206. If the such person fails to comply within 30 days after receipt of the such notice, the department or the Department of Business and Professional Regulation division shall

assess a civil penalty against the person of not less than \$250 and him or her not to exceed \$750 \$100 for the first violation and not less than \$500 and not to exceed \$2,000 \$500 for each subsequent violation. The imposition of the such fine must shall be in accordance with the provisions of chapter 120. If a person refuses to comply with this part ss. 386.205 and 386.206, after having been assessed such penalty, the department or the Department of Business and Professional Regulation division may file a complaint in the circuit court of the county in which the enclosed indoor workplace such public place is located to require compliance.

(3) A person may request an exemption from ss. 386.205 and 386.206 by applying to the department or the division. The department or the division may grant exemptions on a case-by-case basis where it determines that substantial good faith efforts have been made to comply or that emergency or extraordinary circumstances exist.

(3)(4) All fine moneys collected pursuant to this section shall be used by the department for children’s medical services programs pursuant to the provisions of part I of chapter 391.

Section 9. Section 386.208, Florida Statutes, is amended to read:

386.208 Penalties.—Any person who violates s. 386.204 commits a noncriminal violation as defined provided for in s. 775.08(3), punishable by a fine of not more than \$100 for the first violation and not more than \$500 for each subsequent violation. Jurisdiction shall be with the appropriate county court.

Section 10. Section 386.209, Florida Statutes, is reenacted to read:

386.209 Regulation of smoking preempted to state.—This part expressly preempts regulation of smoking to the state and supersedes any municipal or county ordinance on the subject.

Section 11. Section 386.211, Florida Statutes, is amended to read:

386.211 Public announcements in mass transportation terminals.—Announcements about the Florida Clean Indoor Air Act shall be made regularly over public address systems in terminals of public transportation carriers located in metropolitan statistical areas with populations over 230,000 according to the latest census. These announcements shall be made at least every 30 minutes and shall be made in appropriate languages. Each announcement must shall include a statement to the effect that Florida is a clean indoor air state and that smoking is not allowed except as provided in this part only in designated areas.

Section 12. Section 386.212, Florida Statutes, is reenacted and amended to read:

386.212 Smoking prohibited near school property; penalty.—

(1) It is unlawful for any person under 18 years of age to smoke tobacco in, on, or within 1,000 feet of the real property comprising a public or private elementary, middle, or secondary school between the hours of 6 a.m. and midnight. This section does shall not apply to any person occupying a moving vehicle or within a private residence.

(2) A law enforcement officer may issue a citation in such form as prescribed by a county or municipality to any person violating the provisions of this section. Any such citation must contain:

- (a) The date and time of issuance.
- (b) The name and address of the person cited.
- (c) The date and time the civil infraction was committed.
- (d) The statute violated.
- (e) The facts constituting the violation.
- (f) The name and authority of the law enforcement officer.
- (g) The procedure for the person to follow to pay the civil penalty, to contest the citation, or to appear in court.
- (h) The applicable civil penalty if the person elects not to contest the citation.

(i) The applicable civil penalty if the person elects to contest the citation.

(3) Any person issued a citation pursuant to this section shall be deemed to be charged with a civil infraction punishable by a maximum civil penalty not to exceed \$25, or 50 hours of community service or, where available, successful completion of a school-approved anti-tobacco "alternative to suspension" program.

(4) Any person who fails to comply with the directions on the citation shall be deemed to waive his or her right to contest the citation and an order to show cause may be issued by the court.

And the title is amended as follows:

On page 1, lines 16 and 17, delete those lines and insert: requirements for the posting of signs by certain persons and in certain areas; amending s.

Amendment 4 (914128)(with title amendment)—On page 16, lines 8-26, delete those lines and insert:

Section 13. Section 386.2125, Florida Statutes, is created to read:

386.2125 Rulemaking.—The department and the Department of Business and Professional Regulation, shall, in consultation with the State Fire Marshal, have the authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this part.

Section 14. Section 561.695, Florida Statutes, is created to read:

561.695 Stand-alone bar enforcement; penalties.—

(1) The division shall designate as a stand-alone bar in which tobacco smoking is permitted the licensed premises of a vendor that operates a business that meets the definition of a stand-alone bar in s. 386.203(11) upon receipt of the vendor's election to permit tobacco smoking in the licensed premises.

(2) Only the licensed vendor may provide or serve food on the licensed premises of a stand-alone bar. Other than customary bar snacks as defined by rule of the Department of Business and Professional Regulation, the licensed vendor may not provide or serve food to a person on the licensed premises without requiring the person to pay a separately stated charge for the food that reasonably approximates the retail value of the food.

(3) The Division of Alcoholic Beverages and Tobacco shall have the power to enforce the provisions of part II of chapter 386 and to audit a vendor that operates a business that meets the definition of a stand-alone bar as provided in s. 386.203(11).

(4) The division shall adopt rules required for the effective enforcement and administration of this section and part II of chapter 386. The division is authorized to adopt emergency rules pursuant to s. 120.54(4) to implement the provisions of this section.

(5) Any vendor that operates a business that meets the definition of a stand-alone bar as provided in s. 386.203(11) who violates the provisions of this section or part II of chapter 386 shall be subject to the following penalties:

(a) For the first violation the vendor shall be subject to a warning;

(b) For the second violation within a two year period of the first violation the vendor shall be subject to a fine of \$500 to \$2000;

(c) For the third violation within a two year period of the first violation the vendor shall be subject to a 30 day suspension of the right to maintain a stand-alone bar in which tobacco smoking is permitted;

(d) For the fourth subsequent violation the vendor shall be subject to a 60 day suspension of the right to maintain a stand-alone bar in which tobacco smoking is permitted; and

(e) For the fifth subsequent violation the vendor shall be subject to a revocation of the right to maintain a stand-alone bar in which tobacco smoking is permitted.

(6) On or after July 1, 2003, a vendor operating a business intending to be designated as a stand-alone bar as provided in this section shall

post a notice of such intention at the same location where the vendor's current alcoholic beverage license is posted. The notice shall affirm the vendor's intent to comply with the conditions and qualifications of a stand-alone bar imposed pursuant to part II of chapter 386, and the Beverage Law. The vendor must have received the stand-alone bar designation in order to allow smoking in the enclosed indoor workplace.

Section 15. *If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.*

Section 16. *If any law amended by this act was also amended by a law enacted at the 2003 Regular Session of the Legislature, such laws shall be construed as if they had been enacted during the same session of the Legislature, and full effect shall be given to each if possible.*

And the title is amended as follows:

On page 2, line 1, after the semicolon (;) insert: creating s. 561.695, F.S.; providing for designation of stand-alone bars; providing for rule-making; providing for enforcement; providing for penalties;

Pursuant to Rule 4.19, **CS for SB 44-A** as amended was ordered engrossed and then placed on the calendar of Bills on Third Reading.

On motion by Senator Villalobos, by two-thirds vote **HB 143-A** was withdrawn from the Committee on Judiciary.

On motion by Senator Villalobos, by two-thirds vote—

HB 143-A—A bill to be entitled An act relating to the Florida Civil Rights Act of 1992; providing that this act shall be known by the popular name the "Dr. Marvin Davies Florida Civil Rights Act"; creating s. 760.021, F.S.; authorizing the Attorney General to commence against a person or group perpetuating discriminatory practices; providing for damages, injunctive relief, and civil penalties; providing for venue; providing for a hearing to determine a prima facie case; providing for attorney's fees and costs; amending s. 16.57, F.S.; authorizing the Attorney General to investigate violations under ch. 760, F.S.; amending s. 760.02, F.S.; defining "public accommodations"; creating 760.08, F.S.; making unlawful discrimination or segregation in places of public accommodation; providing for construction of the act in pari materia with laws enacted during the 2003 Regular Session of the Legislature; providing an effective date.

—a companion measure, was substituted for **CS for SB 46-A** and by two-thirds vote read the second time by title.

Senator Cowin moved the following amendments which failed:

Amendment 1 (960608)(with title amendment)—On line 31, delete "person or group" and insert: employer, labor organization, joint labor-management committee controlling an apprenticeship or other training or retraining program, person who obstructs another person from obtaining a license, employment agency, or place of public accommodation

And the title is amended as follows:

On line 6, delete "a person or group" and insert: certain persons or entities

Amendment 2 (132328)—Between lines 40 and 41, insert:

(3) The Attorney General may not file an action under this section against any house of worship, religious group, or nonprofit organization qualifying under s. 501(c)(3) of the Internal Revenue Code.

(Redesignate subsequent subsections.)

SENATOR HARIDOPOLOS PRESIDING

Amendment 3 (272462)—Between lines 40 and 41, insert:

(3) The Attorney General may not file an action under this section against any statement or action relating to freedom of speech, freedom of the press, or the free exercise of religion.

(Redesignate subsequent subsections.)

THE PRESIDENT PRESIDING

Amendment 4 (861926)—Delete line 99, and insert: *ground of race, color, national origin, gender, handicap, familial*

On motion by Senator Villalobos, by two-thirds vote **HB 143-A** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—36

Mr. President	Dockery	Peaden
Alexander	Fasano	Posey
Argenziano	Geller	Pruitt
Aronberg	Haridopolos	Saunders
Atwater	Hill	Sebesta
Bennett	Jones	Siplin
Bullard	Klein	Smith
Campbell	Lawson	Villalobos
Clary	Lee	Wasserman Schultz
Constantine	Lynn	Webster
Crist	Margolis	Wilson
Diaz de la Portilla	Miller	Wise

Nays—1

Cowin

REMARKS

On motion by Senator Cowin, the following remarks were ordered spread upon the Journal:

Senator Cowin: Is this bill consistent with the current Florida Civil Rights Act?

Senator Villalobos: Senator Cowin, it is with the exception that currently the Attorney General is not authorized to file an action. That would be a difference but I believe it would be similar and I believe it also tracks the language that the United States Attorney has with the exception that the United States Attorney is not required to go before a court and have a hearing to determine whether or not there is a prima facie case of discrimination.

Senator Cowin: Is the intent of this legislation to be read broadly to include other persons or groups of persons to be sued not specifically enumerated in the bill?

Senator Villalobos: No, Senator Cowin. It does not expand that definition. It merely gives the Attorney General the opportunity to file an action just as any individual in this chamber, for example, would be able to file an action but it does not expand the definition of who would classify as a protected class in any way.

Senator Cowin: Is the intent of this legislation to deny the use of public accommodations to houses of worship or to events hosted by religious groups if the reason for discrimination is based upon a sincerely-held religious belief of the house of worship or religious group?

Senator Villalobos: The phrase “house of worship” is not included in the definition of public accommodations under this bill nor would the provision of this bill in any way supersede the Religious Freedom Restoration Act of 1998.

Senator Cowin: So is the intent of the legislation to deny the use of public accommodations to those houses of worship?

Senator Villalobos: Senator Cowin, first of all I believe the First Amendment to the United States Constitution would prohibit government from interfering with a house of worship or the definition of what you are calling a house of worship. Second of all, so would the Florida Constitution, as well as the Religious Freedom Act of 1998.

Senator Cowin: Is the intent of this legislation to infringe on actions or statements protected by the rights to freedom of speech, freedom of the press, or free exercise of religion?

Senator Villalobos: The answer is “no.”

Senator Cowin: Is the intent of this legislation to expand the term “sex?”

Senator Villalobos: The answer is “no.”

On motion by Senator Aronberg, the following remarks were ordered spread upon the Journal:

Senator Aronberg: About the definition of “sex”, Senator Cowin mentioned that it may include cross-dressing and sexual orientation. It was changed from the original version from gender to sex. Does the word sex as it is used in this bill, include gender identity, cross-dressing, or sexual orientation?

Senator Villalobos: Well, sex includes gender identity because it tells you if you are male or female, but other than that it does not expand the definition in any way whatsoever.

On motion by Senator Clary, the following remarks were ordered spread upon the Journal:

Senator Clary: This is just a question of clarification for the Senator from the 38th, Senator Villalobos. Does the phrase or wording of familial status mean what it means in the housing law: that adults with legal custody of a child may not be discriminated against based upon the degree of kinship with the minor? In other words, nephews, nieces and grandchildren may be treated the same as custodial children for public accommodation purposes.

Senator Villalobos: Senator Clary, the only place that I could find in the Florida Statutes, where familial status is defined is in section 760.20, which is the Fair Housing Act. It is established when an individual who has not attained the age of 18 years is domiciled with:

A. A parent or other persons having legal custody of such individual; or

B. A designee of a parent or other persons having legal custody with the written permission of such parent or other persons.

Senator Clary: My understanding from what you read is that this has the same meaning—the use of the word in your bill.

Senator Villalobos: I’m not saying that it might not be defined somewhere else, but I could find no other area in Florida Statutes where it is defined.

On motion by Senator Dockery, by two-thirds vote—

CS for SB 54-A—A bill to be entitled An act relating to environmental and conservation lands; amending s. 253.025, F.S.; revising requirements for appraisals when acquiring state lands; amending s. 253.034, F.S.; providing conditions under which state-owned lands may be considered nonconservation lands; revising requirements for land management plans for conservation lands to be submitted to the Division of State Lands; providing that land use plans for nonconservation lands be submitted to the Division of State Lands at least every 10 years; revising requirements for the sale of surplus lands; authorizing the Division of State Lands to determine the sale price of surplus lands; providing the Board of Trustees of the Internal Improvement Trust Fund with the authority to adopt rules; directing the Division of State Lands to prepare a state inventory of all federal lands and all lands titled in the name of the state, a state agency, a water management district, or a local government; requiring the participation of counties in developing a county inventory; providing conditions under which certain lands may be made available for purchase under the state’s land surplus process; creating s. 253.0341, F.S.; authorizing counties and local governments to submit requests to surplus state lands directly to the board of trustees; providing for an expedited surplus process; amending s. 253.042, F.S.; revising the circumstances under which the board of trustees may directly exchange state-owned lands; providing requirements for the exchange of donated conservation lands; providing requirements for the conveyance of donated nonconservation lands; providing requirements for the exchange of other state-owned lands; amending s. 253.7823, F.S.; revising requirements for the disposition of former barge canal surplus lands; amending s. 259.032, F.S.; revising requirements for updating

land management plans; revising provisions allowing the use of reverted funds; requiring that state agencies prepare and submit to the Department of Revenue for certification application requests for payment in lieu of taxes from local governments; revising requirements for payment in lieu of taxes; amending s. 259.0322, F.S.; providing for the reinstitution of payments in lieu of taxes; amending s. 259.036, F.S.; requiring land management review teams to submit a 10-year land management plan update to the Acquisition and Restoration Council; amending s. 259.041, F.S.; clarifying certain requirements regarding the acquisition of state-owned lands; amending s. 373.089, F.S.; providing conditions under which lands titled in the name of a water management district may be made available for purchase through a surplus process; amending s. 373.139, F.S.; repealing obsolete requirements; revising requirements for appraisals when acquiring water management district lands; amending s. 373.59, F.S.; revising provisions requiring payments in lieu of taxes from funds deposited into the Water Management Lands Trust Fund; amending s. 373.5905, F.S.; revising provisions requiring reinstitution of payments in lieu of taxes; amending s. 260.016, F.S.; revising powers of the department in evaluating lands for acquisition of greenways and trails; requiring the exchange of lands between the Board of Trustees of the Internal Improvement Trust Fund and a local government under certain conditions; providing purposes for which exchanged lands may be used; requiring the exchange of lands between the Board of Trustees of the Internal Improvement Trust Fund and a private entity by July 1, 2003; repealing s. 253.84, F.S., relating to the acquisition of lands containing cattle-dipping vats; repealing s. 259.0345, F.S., relating to the Florida Forever Advisory Council; amending s. 373.4592, F.S., as amended by ch. 2003-12, Laws of Florida; amending the "Everglades Forever Act"; revising goals and mandates relating to the timing of implementing certain goals; placing time limits on certain provisions unless reauthorized by the Legislature; reenacting s. 201.15(1), (2)(a), (11), and (12), F.S.; providing for distribution of proceeds from excise taxes on documents to pay debt service on Everglades restoration bonds; reenacting s. 215.619, F.S.; authorizing the issuance of Everglades restoration bonds to finance or refinance the cost of acquisition and improvement of land, water areas, and related property interests and resources for the purpose of implementing the Comprehensive Everglades Restoration Plan; providing procedures and limitations; providing for deposit of funds in the Save Our Everglades Trust Fund; reenacting ss. 373.470(4), (5), and (6) and 373.472(1), F.S.; authorizing the payment of debt service on Everglades restoration bonds from the Save Our Everglades Trust Fund; revising requirements for deposit of state and water management district funds into the Save Our Everglades Trust Fund; reenacting s. 6 of ch. 2002-261, Laws of Florida; providing legislative intent that the issuance of Everglades restoration bonds is in the best interest of the state; providing for construction of the act in pari materia with laws enacted during the Regular Session of the Legislature; providing effective dates.

—was read the second time by title.

Senator Campbell moved the following amendment which failed:

Amendment 1 (124274)(with title amendment)—On page 35, line 25 through page 42, line 28, delete those lines and insert:

Section 18. Subsections (2), (3), and (4), paragraphs (c) and (h) of subsection (6), and subsections (7), (10), and (16), of section 373.4592, Florida Statutes, as amended by section 1 of chapter 2003-12, Laws of Florida, are amended, and subsection (17) of that section is reenacted, to read:

373.4592 Everglades improvement and management.—

(2) DEFINITIONS.—As used in this section:

(a) ~~"Best available phosphorus reduction technology" or "BAPRT" means a combination of BMPs and STAs which includes a continuing research and monitoring program to reduce outflow concentrations of phosphorus so as to achieve the phosphorus criterion in the Everglades Protection Area at the earliest practicable date.~~

(a)(b) "Best management practice" or "BMP" means a practice or combination of practices determined by the district, in cooperation with the department, based on research, field-testing, and expert review, to be the most effective and practicable, including economic and technological considerations, on-farm means of improving water quality in agricultural discharges to a level that balances water quality improvements and agricultural productivity.

(b)(e) "C-139 Basin" or "Basin" means those lands described in subsection (16).

(c)(d) "Department" means the Florida Department of Environmental Protection.

(d)(e) "District" means the South Florida Water Management District.

(e)(f) "Everglades Agricultural Area" or "EAA" means the Everglades Agricultural Area, which are those lands described in subsection (15).

(f)(g) "Everglades Construction Project" means the project described in the February 15, 1994, conceptual design document together with construction and operation schedules on file with the South Florida Water Management District, except as modified by this section.

(g)(h) "Everglades Program" means the program of projects, regulations, and research provided by this section, including the Everglades Construction Project.

(h)(i) "Everglades Protection Area" means Water Conservation Areas 1, 2A, 2B, 3A, and 3B, the Arthur R. Marshall Loxahatchee National Wildlife Refuge, and the Everglades National Park.

(j) ~~"Long Term Plan" or "Plan" means the district's "Everglades Protection Area Tributary Basins Conceptual Plan for Achieving Long-Term Water Quality Goals Final Report" dated March 2003, as modified herein.~~

(i)(k) "Master permit" means a single permit issued to a legally responsible entity defined by rule, authorizing the construction, alteration, maintenance, or operation of multiple stormwater management systems that may be owned or operated by different persons and which provides an opportunity to achieve collective compliance with applicable department and district rules and the provisions of this section.

(l) ~~"Optimization" shall mean maximizing the potential treatment effectiveness of the STAs through measures such as additional compartmentalization, improved flow control, vegetation management, or operation refinements, in combination with improvements where practicable in urban and agricultural BMPs, and includes integration with Congressionally authorized components of the Comprehensive Everglades Restoration Plan or "CERP".~~

(j)(m) ~~"Phosphorus criterion" means a numeric interpretation for phosphorus of the Class III narrative nutrient criterion.~~

(k)(n) "Stormwater management program" shall have the meaning set forth in s. 403.031(15).

(l)(o) "Stormwater treatment areas" or "STAs" means those treatment areas described and depicted in the district's conceptual design document of February 15, 1994, and any modifications as provided in this section.

(p) ~~"Technology-based effluent limitation" or "TBEL" means the technology-based treatment requirements as defined in Rule 62-650.200, Florida Administrative Code.~~

(3) EVERGLADES SWIM LONG-TERM PLAN.—

(a) The Legislature finds that the Everglades Program required by this section establishes more extensive and comprehensive requirements for surface water improvement and management within the Everglades than the SWIM plan requirements provided in ss. 373.451-373.456. In order to avoid duplicative requirements, and in order to conserve the resources available to the district, the SWIM plan requirements of those sections shall not apply to the Everglades Protection Area and the EAA during the term of the Everglades Program, and the district will neither propose, nor take final agency action on, any Everglades SWIM plan for those areas until the Everglades Program is fully implemented; *however*, funds under s. 259.101(3)(b) may be used for acquisition of lands necessary to implement the Everglades Construction Project, to the extent these funds are identified in the Statement of Principles of July 1993. The district's actions in implementing the Everglades Construction Project relating to the responsibilities of the EAA and C-139 Basin for funding and water quality compliance in the EAA and the Everglades Protection Area shall be governed by this section.

Other strategies or activities in the March 1992 Everglades SWIM plan may be implemented if otherwise authorized by law.

(b) The Legislature finds that the most reliable means of optimizing the performance of STAs and achieving reasonable further progress in reducing phosphorus entering the Everglades Protection Area is to utilize a long-term planning process. The Legislature finds that the Long-Term Plan provides the best available phosphorus reduction technology based upon a combination of the BMPs and STAs described in the Plan provided that the Plan shall seek to achieve the phosphorus criterion in the Everglades Protection Area. The Long-Term Plan will be implemented and revised with the planning goal and objective of achieving the phosphorus criterion to be adopted pursuant to subparagraph (4)(c)2. in the Everglades Protection Area, and not based on any planning goal or objective in the Plan that is inconsistent with this section. Revisions to the Long-Term Plan shall be incorporated through an adaptive management approach including a process development and engineering component to identify and implement incremental optimization measures for further phosphorus reductions.

(c) It is the intent of the Legislature that implementation of the Long-Term Plan shall be integrated and consistent with the implementation of the projects and activities in the Congressionally authorized components of the CERP so that unnecessary and duplicative costs will be avoided. Nothing in this section shall modify any existing cost share or responsibility provided for projects listed in s. 528 of the Water Resources Development Act of 1996 (110 Stat. 3769) or provided for projects listed in section 601 of the Water Resources Development Act of 2000 (114 Stat. 2572). The Legislature does not intend for the provisions of this section to diminish commitments made by the State of Florida to restore and maintain water quality in the Everglades Protection Area, including the federal lands in the settlement agreement referenced in paragraph (4)(c).

(d) The Legislature recognizes that the Long-Term Plan contains an initial phase and a 10-year second phase. The Legislature intends that a review of this act at least 10 years after implementation of the initial phase is appropriate and necessary to the public interest. The review is the best way to ensure that discharges to the Everglades Protection Area are achieving state water quality standards, including phosphorus reduction, to the maximum extent practicable, and are using the best technology available. A 10-year second phase of the Long-Term Plan must be approved by the Legislature and codified in this act prior to implementation of projects, but not prior to development, review, and approval of projects by the department.

(e) The Long-Term Plan shall be implemented for an initial 13-year phase (2003-2016) and shall, to the maximum extent practicable, achieve water quality standards relating to the phosphorus criterion in the Everglades Protection Area as determined by a network of monitoring stations established for this purpose. Not later than December 31, 2008, and each 5 years thereafter, the department shall review and approve incremental phosphorus reduction measures to be implemented at the earliest practicable date.

(4) EVERGLADES PROGRAM.—

(a) Everglades Construction Project.—The district shall implement the Everglades Construction Project. By the time of completion of the project, the state, district, or other governmental authority shall purchase the inholdings in the Rotenberger and such other lands necessary to achieve a 2:1 mitigation ratio for the use of Brown's Farm and other similar lands, including those needed for the STA 1 Inflow and Distribution Works. The inclusion of public lands as part of the project is for the purpose of treating waters not coming from the EAA for hydroperiod restoration. It is the intent of the Legislature that the district aggressively pursue the implementation of the Everglades Construction Project in accordance with the schedule in this subsection. The Legislature recognizes that adherence to the schedule is dependent upon factors beyond the control of the district, including the timely receipt of funds from all contributors. The district shall take all reasonable measures to complete timely performance of the schedule in this section in order to finish the Everglades Construction Project. The district shall not delay implementation of the project beyond the time delay caused by those circumstances and conditions that prevent timely performance. The district shall not levy ad valorem taxes in excess of 0.1 mill within the Okeechobee Basin for the purposes of the design, construction, and acquisition of the Everglades Construction Project. The ad valorem tax proceeds not exceeding 0.1 mill levied within the Okeechobee Basin for

such purposes shall also be used for design, construction, and implementation of the initial phase of the Long-Term Plan, including operation and maintenance, and research for the projects and strategies in the initial phase of the Long-Term Plan, and including the enhancements and operation and maintenance of the Everglades Construction Project and shall be the sole direct district contribution from district ad valorem taxes appropriated or expended for the design, construction, and acquisition of the Everglades Construction Project unless the Legislature by specific amendment to this section increases the 0.1 mill ad valorem tax contribution, increases the agricultural privilege taxes, or otherwise reallocates the relative contribution by ad valorem taxpayers and taxpayers paying the agricultural privilege taxes toward the funding of the design, construction, and acquisition of the Everglades Construction Project. Notwithstanding the provisions of s. 200.069 to the contrary, any millage levied under the 0.1 mill limitation in this paragraph shall be included as a separate entry on the Notice of Proposed Property Taxes pursuant to s. 200.069. Once the STAs are completed, the district shall allow these areas to be used by the public for recreational purposes in the manner set forth in s. 373.59(11) ~~s. 373.1391(1)~~, considering the suitability of these lands for such uses. These lands shall be made available for recreational use unless the district governing board can demonstrate that such uses are incompatible with the restoration goals of the Everglades Construction Project or the water quality and hydrological purposes of the STAs or would otherwise adversely impact the implementation of the project. The district shall give preferential consideration to the hiring of agricultural workers displaced as a result of the Everglades Construction Project, consistent with their qualifications and abilities, for the construction and operation of these STAs. The following milestones apply to the completion of the Everglades Construction Project as depicted in the February 15, 1994, conceptual design document:

1. The district must complete the final design of the STA 1 East and West and pursue STA 1 East project components as part of a cost-shared program with the Federal Government. The district must be the local sponsor of the federal project that will include STA 1 East, and STA 1 West if so authorized by federal law. *Land acquisition shall be completed for STA 1 West by April 1, 1996, and for STA 1 East by July 1, 1998;*

2. Construction of STA 1 East is to be completed under the direction of the United States Army Corps of Engineers in conjunction with the currently authorized C-51 flood control project *by July 1, 2002;*

3. The district must complete construction of STA 1 West and STA 1 Inflow and Distribution Works under the direction of the United States Army Corps of Engineers, if the direction is authorized under federal law, in conjunction with the currently authorized C-51 flood control project, *by January 1, 1999;*

4. *The district must complete construction of STA 2 by February 1, 1999;*

- 5.4. *The district must complete construction of STA 3/4 by October 1, 2003; however, the district may modify this schedule to incorporate and accelerate enhancements to STA 3/4 as directed in the Long-Term Plan;*

6. *The district must complete construction of STA 5 by January 1, 1999; and*

- 7.5. *The district must complete construction of STA 6 by October 1, 1997.;*

6. ~~The district must, by December 31, 2006, complete construction of enhancements to the Everglades Construction Project recommended in the Long-Term Plan and initiate other pre-2006 strategies in the plan; and~~

- 8.7. East Beach Water Control District, South Shore Drainage District, South Florida Conservancy District, East Shore Water Control District, and the lessee of agricultural lease number 3420 shall complete any system modifications described in the Everglades Construction Project to the extent that funds are available from the Everglades Fund. These entities shall divert the discharges described within the Everglades Construction Project within 60 days of completion of construction of the appropriate STA. Such required modifications shall be deemed to be a part of each district's plan of reclamation pursuant to chapter 298.

- (b) Everglades water supply and hydroperiod improvement and restoration.—

1. A comprehensive program to revitalize the Everglades shall include programs and projects to improve the water quantity reaching the Everglades Protection Area at optimum times and improve hydroperiod deficiencies in the Everglades ecosystem. To the greatest extent possible, wasteful discharges of fresh water to tide shall be reduced, and water conservation practices and reuse measures shall be implemented by water users, consistent with law. Water supply management must include improvement of water quantity reaching the Everglades, correction of long-standing hydroperiod problems, and an increase in the total quantity of water flowing through the system. Water supply management must provide water supply for the Everglades National Park, the urban and agricultural areas, and the Florida Bay and must replace water previously available from the coastal ridge areas of southern Dade County. The Everglades Construction Project redirects some water currently lost to tide. It is an important first step in completing hydroperiod improvement.

2. The district shall operate the Everglades Construction Project as specified in the February 15, 1994, conceptual design document, to provide additional inflows to the Everglades Protection Area. The increased flow from the project shall be directed to the Everglades Protection Area as needed to achieve an average annual increase of 28 percent compared to the baseline years of 1979 to 1988. Consistent with the design of the Everglades Construction Project and without demonstratively reducing water quality benefits, the regulatory releases will be timed and distributed to the Everglades Protection Area to maximize environmental benefits.

3. The district shall operate the Everglades Construction Project in accordance with the February 15, 1994, conceptual design document to maximize the water quantity benefits and improve the hydroperiod of the Everglades Protection Area. All reductions of flow to the Everglades Protection Area from BMP implementation will be replaced. The district shall develop a model to be used for quantifying the amount of water to be replaced. *The district shall publish in the Florida Administrative Weekly a notice of rule development on the model no later than July 1, 1994, and a notice of rulemaking no later than July 1, 1995.* The timing and distribution of this replaced water will be directed to the Everglades Protection Area to maximize the natural balance of the Everglades Protection Area.

4. The Legislature recognizes the complexity of the Everglades watershed, as well as legal mandates under Florida and federal law. As local sponsor of the Central and Southern Florida Flood Control Project, the district must coordinate its water supply and hydroperiod programs with the Federal Government. Federal planning, research, operating guidelines, and restrictions for the Central and Southern Florida Flood Control Project now under review by federal agencies will provide important components of the district's Everglades Program. The department and district shall use their best efforts to seek the amendment of the authorized purposes of the project to include water quality protection, hydroperiod restoration, and environmental enhancement as authorized purposes of the Central and Southern Florida Flood Control Project, in addition to the existing purposes of water supply, flood protection, and allied purposes. Further, the department and the district shall use their best efforts to request that the Federal Government include in the evaluation of the regulation schedule for Lake Okeechobee a review of the regulatory releases, so as to facilitate releases of water into the Everglades Protection Area which further improve hydroperiod restoration.

5. The district, through cooperation with the federal and state agencies, shall develop other programs and methods to increase the water flow and improve the hydroperiod of the Everglades Protection Area.

6. Nothing in this section is intended to provide an allocation or reservation of water or to modify the provisions of part II. All decisions regarding allocations and reservations of water shall be governed by applicable law.

7. The district shall proceed to expeditiously implement the minimum flows and levels for the Everglades Protection Area as required by s. 373.042 and shall expeditiously complete the Lower East Coast Water Supply Plan.

(c) STA 3/4 modification.—The Everglades Program will contribute to the restoration of the Rotenberger and Holey Land tracts. The Everglades Construction Project provides a first step toward restoration by improving hydroperiod with treated water for the Rotenberger tract and by providing a source of treated water for the Holey Land. It is further

the intent of the Legislature that the easternmost tract of the Holey Land, known as the "Toe of the Boot," be removed from STA 3/4 under the circumstances set forth in this paragraph. The district shall proceed to modify the Everglades Construction Project, provided that the redesign achieves at least as many environmental and hydrological benefits as are included in the original design, including treatment of waters from sources other than the EAA, and does not delay construction of STA 3/4. The district is authorized to use eminent domain to acquire alternative lands, only if such lands are located within 1 mile of the northern border of STA 3/4.

(d) Everglades research and monitoring program.—

1. *By January 1996*, the department and the district shall review and evaluate available water quality data for the Everglades Protection Area and tributary waters and identify any additional information necessary to adequately describe water quality in the Everglades Protection Area and tributary waters. *By such date*, the department and the district shall also initiate a research and monitoring program to generate such additional information identified and to evaluate the effectiveness of the BMPs and STAs, as they are implemented, in improving water quality and maintaining designated and existing beneficial uses of the Everglades Protection Area and tributary waters. As part of the program, the district shall monitor all discharges into the Everglades Protection Area for purposes of determining compliance with state water quality standards.

2. The research and monitoring program shall evaluate the ecological and hydrological needs of the Everglades Protection Area, including the minimum flows and levels. Consistent with such needs, the program shall also evaluate water quality standards for the Everglades Protection Area and for the canals of the EAA, so that these canals can be classified in the manner set forth in paragraph (e) and protected as an integral part of the water management system which includes the STAs of the Everglades Construction Project and allows landowners in the EAA to achieve applicable water quality standards compliance by BMPs and STA treatment to the extent this treatment is available and effective.

3. The research and monitoring program shall include research seeking to optimize the design and operation of the STAs, including research to reduce outflow concentrations, and to identify other treatment and management methods and regulatory programs that are superior to STAs in achieving the intent and purposes of this section.

4. The research and monitoring program shall be conducted *to allow completion by December 2001 of any research necessary* to allow the department to propose a phosphorus criterion in the Everglades Protection Area, and to evaluate existing state water quality standards applicable to the Everglades Protection Area and existing state water quality standards and classifications applicable to the EAA canals. In developing the phosphorus criterion, the department shall also consider the minimum flows and levels for the Everglades Protection Area and the district's water supply plans for the Lower East Coast.

5. *The district, in cooperation with the department, shall prepare a peer-reviewed interim report regarding the research and monitoring program, which shall be submitted no later than January 1, 1999, to the Governor, the President of the Senate, and the Speaker of the House of Representatives for their review. The interim report shall summarize all data and findings available as of July 1, 1998, on the effectiveness of STAs and BMPs in improving water quality. The interim report shall also include a summary of the then-available data and findings related to the following: the Lower East Coast Water Supply Plan of the district, the United States Environmental Protection Agency Everglades Mercury Study, the United States Army Corps of Engineers South Florida Ecosystem Restoration Study, the results of research and monitoring of water quality and quantity in the Everglades region, the degree of phosphorus discharge reductions achieved by BMPs and agricultural operations in the region, the current information on the ecological and hydrological needs of the Everglades, and the costs and benefits of phosphorus reduction alternatives. Prior to finalizing the interim report, the district shall conduct at least one scientific workshop and two public hearings on its proposed interim report. One public hearing must be held in Palm Beach County and the other must be held in either Dade or Broward County. The interim report shall be used by the department and the district in making any decisions regarding the implementation of the Everglades Construction Project subsequent to the completion of the interim report. The construction of STAs 3/4 shall not be commenced until*

90 days after the interim report has been submitted to the Governor and the Legislature.

6.5. Beginning January 1, 2000, the district and the department shall annually issue a peer-reviewed report regarding the research and monitoring program that summarizes all data and findings. The department shall provide copies of the report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report shall identify water quality parameters, in addition to phosphorus, which exceed state water quality standards or are causing or contributing to adverse impacts in the Everglades Protection Area.

7.6. The district shall continue research seeking to optimize the design and operation of STAs and to identify other treatment and management methods that are superior to STAs in achieving optimum water quality and water quantity for the benefit of the Everglades. The district shall optimize the design and operation of the STAs described in the Everglades Construction Project prior to expanding their size. Additional methods to achieve compliance with water quality standards shall not be limited to more intensive management of the STAs.

(e) Evaluation of water quality standards.—

1. The department and the district shall employ all means practicable to complete by December 31, 1998, any additional research necessary to:

a. Numerically interpret for phosphorus the Class III narrative nutrient criterion necessary to meet water quality standards in the Everglades Protection Area; and

b. Evaluate existing water quality standards applicable to the Everglades Protection Area and EAA canals.

This research shall be completed no later than December 31, 2001.

2. By December 31, 2001, the department shall file a notice of rulemaking in the Florida Administrative Weekly to establish a phosphorus criterion in the Everglades Protection Area. In no case shall such phosphorus criterion allow waters in the Everglades Protection Area to be altered so as to cause an imbalance in the natural populations of aquatic flora or fauna. The phosphorus criterion shall be 10 parts per billion (ppb) in the Everglades Protection Area in the event the department does not adopt by rule such criterion by December 31, 2003. However, in the event the department fails to adopt a phosphorus criterion on or before December 31, 2002, any person whose substantial interests would be affected by the rulemaking shall have the right, on or before February 28, 2003, to petition for a writ of mandamus to compel the department to adopt by rule such criterion. Venue for the mandamus action must be Leon County. The court may stay implementation of the 10 parts per billion (ppb) criterion during the pendency of the mandamus proceeding upon a demonstration by the petitioner of irreparable harm in the absence of such relief. The department's phosphorus criterion, whenever adopted, shall supersede the 10 parts per billion (ppb) criterion otherwise established by this section, but shall not be lower than the natural conditions of the Everglades Protection Area and shall take into account spatial and temporal variability. ~~The department's rule adopting a phosphorus criterion may include moderating provisions during the implementation of the initial phase of the Long Term Plan authorizing discharges based upon BAPRT providing net improvement to impacted areas. Discharges to unimpacted areas may also be authorized by moderating provisions, which shall require BAPRT, and which must be based upon a determination by the department that the environmental benefits of the discharge clearly outweigh potential adverse impacts.~~

3. The department shall use the best available information to define relationships between waters discharged to, and the resulting water quality in, the Everglades Protection Area. The department or the district shall use these relationships to establish discharge limits in permits for discharges into the EAA canals and the Everglades Protection Area necessary to prevent an imbalance in the natural populations of aquatic flora or fauna in the Everglades Protection Area, and to provide a net improvement in the areas already impacted. ~~During the implementation of the initial phase of the Long Term Plan, permits issued by the department shall be based on BAPRT, and shall include technology-based effluent limitations consistent with the Long Term Plan. Compliance with the phosphorus criterion shall be based upon a long-term geometric mean of concentration levels to be measured at sampling stations recognized from the research to be reasonably representative of receiving waters in the Everglades Protection Area, and so located so as~~

to assure that the Everglades Protection Area is not altered so as to cause an imbalance in natural populations of aquatic flora and fauna and to assure a net improvement in the areas already impacted. For the Everglades National Park and the Arthur R. Marshall Loxahatchee National Wildlife Refuge, the method for measuring compliance with the phosphorus criterion shall be in a manner consistent with Appendices A and B, respectively, of the settlement agreement dated July 26, 1991, entered in case No. 88-1886-Civ-Hoeveler, United States District Court for the Southern District of Florida, that recognizes and provides for incorporation of relevant research.

4. The department's evaluation of any other water quality standards must include the department's antidegradation standards and EAA canal classifications. In recognition of the special nature of the conveyance canals of the EAA, as a component of the classification process, the department is directed to formally recognize by rulemaking existing actual beneficial uses of the conveyance canals in the EAA. This shall include recognition of the Class III designated uses of recreation, propagation and maintenance of a healthy, well-balanced population of fish and wildlife, the integrated water management purposes for which the Central and Southern Florida Flood Control Project was constructed, flood control, conveyance of water to and from Lake Okeechobee for urban and agricultural water supply, Everglades hydroperiod restoration, conveyance of water to the STAs, and navigation.

(f) EAA best management practices.—

1. The district, in cooperation with the department, shall develop and implement a water quality monitoring program to evaluate the effectiveness of the BMPs in achieving and maintaining compliance with state water quality standards and restoring and maintaining designated and existing beneficial uses. The program shall include an analysis of the effectiveness of the BMPs in treating constituents that are not being significantly improved by the STAs. The monitoring program shall include monitoring of appropriate parameters at representative locations.

2. The district shall continue to require and enforce the BMP and other requirements of chapters 40E-61 and 40E-63, Florida Administrative Code, during the terms of the existing permits issued pursuant to those rules. Chapter 40E-61, Florida Administrative Code, may be amended to include the BMPs required by chapter 40E-63, Florida Administrative Code. Prior to the expiration of existing permits, and during each 5-year term of subsequent permits as provided for in this section, those rules shall be amended to implement a comprehensive program of research, testing, and implementation of BMPs that will address all water quality standards within the EAA and Everglades Protection Area. Under this program:

a. EAA landowners, through the EAA Environmental Protection District or otherwise, shall sponsor a program of BMP research with qualified experts to identify appropriate BMPs.

b. Consistent with the water quality monitoring program, BMPs will be field-tested in a sufficient number of representative sites in the EAA to reflect soil and crop types and other factors that influence BMP design and effectiveness.

c. BMPs as required for varying crops and soil types shall be included in permit conditions in the 5-year permits issued pursuant to this section.

d. The district shall conduct research in cooperation with EAA landowners to identify water quality parameters that are not being significantly improved either by the STAs or the BMPs, and to identify further BMP strategies needed to address these parameters.

3. The Legislature finds that through the implementation of the Everglades BMPs Program and the implementation of the Everglades Construction Project, reasonable further progress will be made towards addressing water quality requirements of the EAA canals and the Everglades Protection Area. Permittees within the EAA and the C-139 Basin who are in full compliance with the conditions of permits under chapters 40E-61 and 40E-63, Florida Administrative Code, have made all payments required under the Everglades Program, and are in compliance with subparagraph (a)8., if applicable, shall not be required to implement additional water quality improvement measures, prior to December 31, 2006, other than those required by subparagraph 2., with the following exceptions:

a. Nothing in this subparagraph shall limit the existing authority of the department or the district to limit or regulate discharges that pose a significant danger to the public health and safety; and

b. New land uses and new stormwater management facilities other than alterations to existing agricultural stormwater management systems for water quality improvements shall not be accorded the compliance established by this section. Permits may be required to implement improvements or alterations to existing agricultural water management systems.

4. As of December 31, 2006, all permits, including those issued prior to that date, shall require implementation of additional water quality measures, taking into account the water quality treatment actually provided by the STAs and the effectiveness of the BMPs. As of that date, no permittee's discharge shall cause or contribute to any violation of water quality standards in the Everglades Protection Area.

5. Effective immediately, landowners within the C-139 Basin shall not collectively exceed an annual average loading of phosphorus of 28.7 metric tons based proportionately on the historical rainfall for the C-139 Basin over the period of October 1, 1978, to September 30, 1988. New surface inflows shall not increase the annual average loading of phosphorus stated above. Provided that the C-139 Basin does not exceed this annual average loading, all landowners within the Basin shall be in compliance for that year. Compliance determinations for individual landowners within the C-139 Basin for remedial action, if the Basin is determined by the district to be out of compliance for that year, shall be based on the landowners' proportional share of the total phosphorus loading of 28.7 metric tons. The total phosphorus discharge load shall be determined by a method consistent with Appendix 40E-63-3, Florida Administrative Code, disregarding the 25-percent phosphorus reduction factor as set forth in Appendix B2 of Rule 40E-63, Everglades Program, Florida Administrative Code.

6. The district, in cooperation with the department, shall develop and implement a water quality monitoring program to evaluate the quality of the discharge from the C-139 Basin. Upon determination by the department or the district that the C-139 Basin is exceeding any presently existing water quality standards, the district shall require landowners within the C-139 Basin to implement BMPs appropriate to the land uses within the C-139 Basin consistent with subparagraph 2. Thereafter, the provisions of subparagraphs 2.-4. shall apply to the landowners within the C-139 Basin.

(g) Monitoring and control of exotic species.—

1. The district shall establish a biological monitoring network throughout the Everglades Protection Area and shall prepare a survey of exotic species at least every 2 years.

2. In addition, the district shall establish a program to coordinate with federal, state, or other governmental entities the control of continued expansion and the removal of these exotic species. The district's program shall give high priority to species affecting the largest areal extent within the Everglades Protection Area.

(6) EVERGLADES AGRICULTURAL PRIVILEGE TAX.—

(c) The initial Everglades agricultural privilege tax roll shall be certified for the tax notices mailed in November 1994. Incentive credits to the Everglades agricultural privilege taxes to be included on the initial Everglades agricultural privilege tax roll, if any, shall be based upon the total phosphorus load reduction for the year ending April 30, 1993. The Everglades agricultural privilege taxes for each year shall be computed in the following manner:

1. Annual Everglades agricultural privilege taxes shall be charged for the privilege of conducting an agricultural trade or business on each acre of real property or portion thereof. The annual Everglades agricultural privilege tax shall be \$24.89 per acre for the tax notices mailed in November 1994 through November 1997; \$27 per acre for the tax notices mailed in November 1998 through November 2001; \$31 per acre for the tax notices mailed in November 2002 through November 2005; and \$35 per acre for the tax notices mailed in November 2006 through November 2013.

2. It is the intent of the Legislature to encourage the performance of best management practices to maximize the reduction of phosphorus loads at points of discharge from the EAA by providing an incentive

credit against the Everglades agricultural privilege taxes set forth in subparagraph 1. The total phosphorus load reduction shall be measured for the entire EAA by comparing the actual measured total phosphorus load attributable to the EAA for each annual period ending on April 30 to the total estimated phosphorus load that would have occurred during the 1979-1988 base period using the model for total phosphorus load determinations provided in chapter 40E-63, Florida Administrative Code, utilizing the technical information and procedures contained in Section IV-EAA Period of Record Flow and Phosphorus Load Calculations; Section V-Monitoring Requirements; and Section VI-Phosphorus Load Allocations and Compliance Calculations of the Draft Technical Document in Support of chapter 40E-63, Florida Administrative Code - Works of the District within the Everglades, March 3, 1992, and the Standard Operating Procedures for Water Quality Collection in Support of the Everglades Water Condition Report, dated February 18, 1994. The model estimates the total phosphorus load that would have occurred during the 1979-1988 base period by substituting the rainfall conditions for such annual period ending April 30 for the conditions that were used to calibrate the model for the 1979-1988 base period. The data utilized to calculate the actual loads attributable to the EAA shall be adjusted to eliminate the effect of any load and flow that were not included in the 1979-1988 base period as defined in chapter 40E-63, Florida Administrative Code. The incorporation of the method of measuring the total phosphorus load reduction provided in this subparagraph is intended to provide a legislatively approved aid to the governing board of the district in making an annual ministerial determination of any incentive credit.

3. Phosphorus load reductions calculated in the manner described in subparagraph 2. and rounded to the nearest whole percentage point for each annual period beginning on May 1 and ending on April 30 shall be used to compute incentive credits to the Everglades agricultural privilege taxes to be included on the annual tax notices mailed in November of the next ensuing calendar year. Incentive credits, if any, will reduce the Everglades agricultural privilege taxes set forth in subparagraph 1. only to the extent that the phosphorus load reduction exceeds 25 percent. Subject to subparagraph 4., the reduction of phosphorus load by each percentage point in excess of 25 percent, computed for the 12-month period ended on April 30 of the calendar year immediately preceding certification of the Everglades agricultural privilege tax, shall result in the following incentive credits: \$0.33 per acre for the tax notices mailed in November 1994 through November 1997; \$0.54 per acre for the tax notices mailed in November 1998 through November 2001; \$0.61 per acre for the tax notices mailed in November 2002 through November 2005, and \$0.65 per acre for the tax notices mailed in November 2006 through November 2013. The determination of incentive credits, if any, shall be documented by resolution of the governing board of the district adopted prior to or at the time of the adoption of its resolution certifying the annual Everglades agricultural privilege tax roll to the appropriate tax collector.

4. Notwithstanding subparagraph 3., incentive credits for the performance of best management practices shall not reduce the minimum annual Everglades agricultural privilege tax to less than \$24.89 per acre, which annual Everglades agricultural privilege tax as adjusted in the manner required by paragraph (e) shall be known as the "minimum tax." To the extent that the application of incentive credits for the performance of best management practices would reduce the annual Everglades agricultural privilege tax to an amount less than the minimum tax, then the unused or excess incentive credits for the performance of best management practices shall be carried forward, on a phosphorus load percentage basis, to be applied as incentive credits in subsequent years. Any unused or excess incentive credits remaining after certification of the Everglades agricultural privilege tax roll for the tax notices mailed in November 2013 shall be canceled.

5. Notwithstanding the schedule of Everglades agricultural privilege taxes set forth in subparagraph 1., the owner, lessee, or other appropriate interestholder of any property shall be entitled to have the Everglades agricultural privilege tax for any parcel of property reduced to the minimum tax, commencing with the tax notices mailed in November 1996 for parcels of property participating in the early baseline option as defined in chapter 40E-63, Florida Administrative Code, and with the tax notices mailed in November 1997 for parcels of property not participating in the early baseline option, upon compliance with the requirements set forth in this subparagraph. The owner, lessee, or other appropriate interestholder shall file an application with the executive director of the district prior to July 1 for consideration of reduction to the minimum tax on the Everglades agricultural privilege tax roll to be certified for the tax notice mailed in November of the same calendar year and

shall have the burden of proving the reduction in phosphorus load attributable to such parcel of property. The phosphorus load reduction for each discharge structure serving the parcel shall be measured as provided in chapter 40E-63, Florida Administrative Code, and the permit issued for such property pursuant to chapter 40E-63, Florida Administrative Code. A parcel of property which has achieved the following annual phosphorus load reduction standards shall have the minimum tax included on the annual tax notice mailed in November of the next ensuing calendar year: 30 percent or more for the tax notices mailed in November 1994 through November 1997; 35 percent or more for the tax notices mailed in November 1998 through November 2001; 40 percent or more for the tax notices mailed in November 2002 through November 2005; and 45 percent or more for the tax notices mailed in November 2006 through November 2013. In addition, any parcel of property that achieves an annual flow weighted mean concentration of 50 parts per billion (ppb) of phosphorus at each discharge structure serving the property for any year ending April 30 shall have the minimum tax included on the annual tax notice mailed in November of the next ensuing calendar year. Any annual phosphorus reductions that exceed the amount necessary to have the minimum tax included on the annual tax notice for any parcel of property shall be carried forward to the subsequent years' phosphorus load reduction to determine if the minimum tax shall be included on the annual tax notice. The governing board of the district shall deny or grant the application by resolution adopted prior to or at the time of the adoption of its resolution certifying the annual Everglades agricultural privilege tax roll to the appropriate tax collector.

6. The annual Everglades agricultural privilege tax for the tax notices mailed in November 2014 through November 2016 shall be \$25 per acre and for tax notices mailed in November 2017 and thereafter shall be \$10 per acre.

(h) In recognition of the findings set forth in subsection (1), the Legislature finds that the assessment and use of the Everglades agricultural privilege tax is a matter of concern to all areas of Florida and the Legislature intends this act to be a general law authorization of the tax within the meaning of s. 9, Art. VII of the State Constitution and that payment of the tax complies with the obligations of owners and users of land under s. 7(b), Art. II of the State Constitution.

(7) C-139 AGRICULTURAL PRIVILEGE TAX.—

(a) There is hereby imposed an annual C-139 agricultural privilege tax for the privilege of conducting an agricultural trade or business on:

1. All real property located within the C-139 Basin that is classified as agricultural under the provisions of chapter 193; and

2. Leasehold or other interests in real property located within the C-139 Basin owned by the United States, the state, or any agency thereof permitting the property to be used for agricultural purposes in a manner that would result in such property being classified as agricultural under the provisions of chapter 193 if not governmentally owned, whether or not such property is actually classified as agricultural under the provisions of chapter 193.

It is hereby determined by the Legislature that the privilege of conducting an agricultural trade or business on such property constitutes a reasonable basis for imposing the C-139 agricultural privilege tax and that logical differences exist between the agricultural use of such property and the use of other property within the C-139 Basin for residential or nonagricultural commercial use. The C-139 agricultural privilege tax shall constitute a lien against the property, or the leasehold or other interest in governmental property permitting such property to be used for agricultural purposes, described on the C-139 agricultural privilege tax roll. The lien shall be in effect from January 1 of the year the tax notice is mailed until discharged by payment and shall be equal in rank and dignity with the liens of all state, county, district, or municipal taxes and non-ad valorem assessments imposed pursuant to general law, special act, or local ordinance and shall be superior in dignity to all other liens, titles, and claims.

(b) The C-139 agricultural privilege tax, other than for leasehold or other interests in governmental property permitting such property to be used for agricultural purposes, shall be collected in the manner provided for ad valorem taxes. By September 15 of each year, the governing board of the district shall certify by resolution a C-139 agricultural privilege tax roll on compatible electronic medium to the tax collector of each county in which a portion of the C-139 Basin is located. The district shall also produce one copy of the roll in printed form which shall be available

for inspection by the public. The district shall post the C-139 agricultural privilege tax for each parcel on the roll. The tax collector shall not accept any such roll that is not certified on compatible electronic medium and that does not contain the posting of the C-139 agricultural privilege tax for each parcel. It is the responsibility of the district that such rolls be free of errors and omissions. Alterations to such rolls may be made by the executive director of the district, or a designee, up to 10 days before certification. If the tax collector or any taxpayer discovers errors or omissions on such roll, such person may request the district to file a corrected roll or a correction of the amount of any C-139 agricultural privilege tax. Other than for leasehold or other interests in governmental property permitting such property to be used for agricultural purposes, C-139 agricultural privilege taxes collected pursuant to this section shall be included in the combined notice for ad valorem taxes and non-ad valorem assessments provided for in s. 197.3635. Such C-139 agricultural privilege taxes shall be listed in the portion of the combined notice utilized for non-ad valorem assessments. A separate mailing is authorized only as a solution to the most exigent factual circumstances. However, if a tax collector cannot merge a C-139 agricultural privilege tax roll to produce such a notice, the tax collector shall mail a separate notice of C-139 agricultural privilege taxes or shall direct the district to mail such a separate notice. In deciding whether a separate mailing is necessary, the tax collector shall consider all costs to the district and taxpayers of such a separate mailing and the adverse effects to the taxpayers of delayed and multiple notices. The district shall bear all costs associated with any separate notice. C-139 agricultural privilege taxes collected pursuant to this section shall be subject to all collection provisions of chapter 197, including provisions relating to discount for early payment, prepayment by installment method, deferred payment, penalty for delinquent payment, and issuance and sale of tax certificates and tax deeds for nonpayment. C-139 agricultural privilege taxes for leasehold or other interests in property owned by the United States, the state, or any agency thereof permitting such property to be used for agricultural purposes shall be included on the notice provided pursuant to s. 196.31, a copy of which shall be provided to lessees or other interestholders registering with the district, and shall be collected from the lessee or other appropriate interestholder and remitted to the district immediately upon collection. C-139 agricultural privilege taxes included on the statement provided pursuant to s. 196.31 shall be due and collected on or prior to the next April 1 following provision of the notice. Proceeds of the C-139 agricultural privilege taxes shall be distributed by the tax collector to the district. Each tax collector shall be paid a commission equal to the actual cost of collection, not to exceed 2 percent, on the amount of C-139 agricultural privilege taxes collected and remitted. Notwithstanding any general law or special act to the contrary, C-139 agricultural privilege taxes shall not be included on the notice of proposed property taxes provided in s. 200.069.

(c) The initial C-139 agricultural privilege tax roll shall be certified for the tax notices mailed in November 1994. The C-139 agricultural privilege taxes for the tax notices mailed in November 1994 through November 2002 shall be computed by dividing \$654,656 by the number of acres included on the C-139 agricultural privilege tax roll for such year, excluding any property located within the C-139 Annex.

2. The C-139 agricultural privilege taxes for the tax notices mailed in November 2003 through November 2013 shall be computed by dividing \$654,656 by the number of acres included on the C-139 agricultural privilege tax roll for November 2001, excluding any property located within the C-139 Annex.

3. The C-139 agricultural privilege taxes for the tax notices mailed in November 2014 and thereafter shall be \$1.80 per acre.

(d) For purposes of this paragraph, "vegetable acreage" means, for each tax year, any portion of a parcel of property used for a period of not less than 8 months for the production of vegetable crops, including sweet corn, during the 12 months ended September 30 of the year preceding the tax year. Land preparation, crop rotation, and fallow periods shall not disqualify property from classification as vegetable acreage if such property is actually used for the production of vegetable crops.

1. If either the Governor, the President of the United States, or the United States Department of Agriculture declares the existence of a state of emergency or disaster resulting from extreme natural conditions impairing the ability of vegetable acreage to produce crops, payment of the C-139 agricultural privilege taxes imposed for the privilege of conducting an agricultural trade or business on such property shall be deferred for a period of 1 year, and all subsequent annual payments shall be deferred for the same period.

a. If the declaration occurs between April 1 and October 31, the C-139 agricultural privilege tax to be included on the next annual tax notice will be deferred to the subsequent annual tax notice.

b. If the declaration occurs between November 1 and March 31 and the C-139 agricultural privilege tax included on the most recent tax notice has not been paid, such C-139 agricultural privilege tax will be deferred to the next annual tax notice.

c. If the declaration occurs between November 1 and March 31 and the C-139 agricultural privilege tax included on the most recent tax notice has been paid, the C-139 agricultural privilege tax to be included on the next annual tax notice will be deferred to the subsequent annual tax notice.

2. In the event payment of C-139 agricultural privilege taxes is deferred pursuant to this paragraph, the district must record a notice in the official records of each county in which vegetable acreage subject to such deferment is located. The recorded notice must describe each parcel of property as to which C-139 agricultural privilege taxes have been deferred and the amount deferred for such property. If all or any portion of the property as to which C-139 agricultural privilege taxes have been deferred ceases to be classified as agricultural under the provisions of chapter 193 or otherwise subject to the C-139 agricultural privilege tax, all deferred amounts must be included on the tax notice for such property mailed in November of the first tax year for which such property is not subject to the C-139 agricultural privilege tax. After a property owner has paid all outstanding C-139 agricultural privilege taxes, including any deferred amounts, the district shall provide the property owner with a recordable instrument evidencing the payment of all outstanding amounts.

3. The owner, lessee, or other appropriate interestholder shall file an application with the executive director of the district prior to July 1 for classification of a portion of the property as vegetable acreage on the C-139 agricultural privilege tax roll to be certified for the tax notice mailed in November of the same calendar year and shall have the burden of proving the number of acres used for the production of vegetable crops during the year in which incentive credits are determined and the period of such use. The governing board of the district shall deny or grant the application by resolution adopted prior to or at the time of the adoption of its resolution certifying the annual C-139 agricultural privilege tax roll to the appropriate tax collector.

4. This paragraph does not relieve vegetable acreage from the performance of best management practices specified in chapter 40E-63, Florida Administrative Code.

(e) Any owner, lessee, or other appropriate interestholder of property subject to the C-139 agricultural privilege tax may contest the C-139 agricultural privilege tax by filing an action in circuit court.

1. No action may be brought to contest the C-139 agricultural privilege tax after 60 days from the date the tax notice that includes the C-139 agricultural privilege tax is mailed by the tax collector. Before an action to contest the C-139 agricultural privilege tax may be brought, the taxpayer shall pay to the tax collector the amount of the C-139 agricultural privilege tax which the taxpayer admits in good faith to be owing. The tax collector shall issue a receipt for the payment and the receipt shall be filed with the complaint. Payment of an C-139 agricultural privilege tax shall not be deemed an admission that such tax was due and shall not prejudice the right to bring a timely action to challenge such tax and seek a refund. No action to contest the C-139 agricultural privilege tax may be maintained, and such action shall be dismissed, unless all C-139 agricultural privilege taxes imposed in years after the action is brought, which the taxpayer in good faith admits to be owing, are paid before they become delinquent. The requirements of this paragraph are jurisdictional.

2. In any action involving a challenge of the C-139 agricultural privilege tax, the court shall assess all costs. If the court finds that the amount of tax owed by the taxpayer is greater than the amount the taxpayer has in good faith admitted and paid, it shall enter judgment against the taxpayer for the deficiency and for interest on the deficiency at the rate of 12 percent per year from the date the tax became delinquent. If it finds that the amount of tax which the taxpayer has admitted to be owing is grossly disproportionate to the amount of tax found to be due and that the taxpayer's admission was not made in good faith, the court shall also assess a penalty at the rate of 25 percent of the deficiency

per year from the date the tax became delinquent. The court may issue injunctions to restrain the sale of property for any C-139 agricultural privilege tax which appears to be contrary to law or equity.

(f) Notwithstanding any contrary provisions in chapter 120, or any provision of any other law, an action in circuit court shall be the exclusive remedy to challenge the assessment of an C-139 agricultural privilege tax and owners of property subject to the C-139 agricultural privilege tax shall have no right or standing to initiate administrative proceedings under chapter 120 to challenge the assessment of an C-139 agricultural privilege tax including specifically, and without limitation, the annual certification by the district governing board of the C-139 agricultural privilege tax roll to the appropriate tax collector, the denial of an application for exclusion from the C-139 agricultural privilege tax, and the denial of any application for classification as vegetable acreage, deferment of payment for vegetable acreage, or correction of any alleged error in the C-139 agricultural privilege tax roll.

(g) In recognition of the findings set forth in subsection (1), the Legislature finds that the assessment and use of the C-139 agricultural privilege tax is a matter of concern to all areas of Florida and the Legislature intends this section to be a general law authorization of the tax within the meaning of s. 9, Art. VII of the State Constitution.

(10) LONG-TERM COMPLIANCE PERMITS.—By December 31, 2006, the department and the district shall take such action as may be necessary to implement the pre-2006 projects and strategies of the Long-Term Plan so that water delivered to the Everglades Protection Area achieves in all parts of the Everglades Protection Area state water quality standards, including the phosphorus criterion in all parts of the Everglades Protection Area, and moderating provisions.

(a) By December 31, 2003, the district shall submit to the department a permit modification to incorporate proposed changes to the Everglades Construction Project and the permits issued pursuant to subsection (9). These changes shall be designed to achieve compliance with the phosphorus criterion and the other state water quality standards by December 31, 2006. By December 31, 2003, the district shall submit to the department an application for permit modification to incorporate proposed changes to the Everglades Construction Project and other district works delivering water to the Everglades Protection Area as needed to implement the pre-2006 projects and strategies of the Long-Term Plan in all permits issued by the department, including the permits issued pursuant to subsection (9). These changes shall be designed to achieve state water quality standards, including the phosphorus criterion and moderating provisions, to the maximum extent practicable. Under no circumstances shall the project or strategy cause or contribute to violation of state water quality standards. During the implementation of the initial phase of the Long-Term Plan, permits issued by the department shall be based on BAPRT, and shall include technology-based effluent limitations consistent with the Long-Term Plan, as provided in subparagraph (4)(c)3.

(b) If the Everglades Construction Project or other discharges to the Everglades Protection Area are not in compliance with state water quality standards, the permit application shall include:

1. A plan for achieving compliance with the phosphorus criterion in the Everglades Protection Area.
2. A plan for achieving compliance in the Everglades Protection Area with state water quality standards other than the phosphorus criterion.
3. Proposed cost estimates for the plans referred to in subparagraphs 1. and 2.
4. Proposed funding mechanisms for the plans referred to in subparagraphs 1. and 2.
5. Proposed schedules for implementation of the plans referred to in subparagraphs 1. and 2.

(c)(b) If the Everglades Construction Project or other discharges to the Everglades Protection Area are in compliance with state water quality standards, including the phosphorus criterion, the permit application shall include:

1. A plan for maintaining compliance with the phosphorus criterion in the Everglades Protection Area.

2. A plan for maintaining compliance in the Everglades Protection Area with state water quality standards other than the phosphorus criterion.

(16) DEFINITION OF C-139 BASIN.—For purposes of this section:

(a) “C-139 Basin” or “Basin” means the following described property: beginning at the intersection of an easterly extension of the south bank of Deer Fence Canal with the center line of South Florida Water Management District’s Levee 3 in Section 33, Township 46 South, Range 34 East, Hendry County, Florida; thence, westerly along said easterly extension and along the South bank of said Deer Fence Canal to where it intersects the center line of State Road 846 in Section 33, Township 46 South, Range 32 East; thence, departing from said top of bank to the center line of said State Road 846, westerly along said center line of said State Road 846 to the West line of Section 4, Township 47 South, Range 31 East; thence, northerly along the West line of said section 4, and along the west lines of Sections 33 and 28, Township 46 South, Range 31 East, to the northwest corner of said Section 28; thence, easterly along the North line of said Section 28 to the North one-quarter (N¼) corner of said Section 28; thence, northerly along the West line of the Southeast one-quarter (SE¼) of Section 21, Township 46 South, Range 31 East, to the northwest corner of said Southeast one-quarter (SE¼) of Section 21; thence, easterly along the North line of said Southeast one-quarter (SE¼) of Section 21 to the northeast corner of said Southeast one-quarter (SE¼) of Section 21; thence, northerly along the East line of said Section 21 and the East line of Section 16, Township 46 South, Range 31, East, to the northeast corner thereof; thence, westerly along the North line of said Section 16, to the northwest corner thereof; thence, northerly along the West line of Sections 9 and 4, Township 46 South, Range 31, East, to the northwest corner of said Section 4; thence, westerly along the North lines of Section 5 and Section 6, Township 46 South, Range 31 East, to the South one-quarter (S¼) corner of Section 31, Township 45 South, Range 31 East; thence, northerly to the South one-quarter (S¼) corner of Section 30, Township 45 South, Range 31 East; thence, easterly along the South line of said Section 30 and the South lines of Sections 29 and 28, Township 45 South, Range 31 East, to the Southeast corner of said Section 28; thence, northerly along the East line of said Section 28 and the East lines of Sections 21 and 16, Township 45 South, Range 31 East, to the Northwest corner of the Southwest one-quarter of the Southwest one-quarter (SW¼ of the SW ¼) of Section 15, Township 45 South, Range 31 East; thence, northeasterly to the east one-quarter (E¼) corner of Section 15, Township 45 South, Range 31 East; thence, northerly along the East line of said Section 15, and the East line of Section 10, Township 45 South, Range 31 East, to the center line of a road in the Northeast one-quarter (NE¼) of said Section 10; thence, generally easterly and northeasterly along the center line of said road to its intersection with the center line of State Road 832; thence, easterly along said center line of said State Road 832 to its intersection with the center line of State Road 833; thence, northerly along said center line of said State Road 833 to the north line of Section 9, Township 44 South, Range 32 East; thence, easterly along the North line of said Section 9 and the north lines of Sections 10, 11 and 12, Township 44 South, Range 32 East, to the northeast corner of Section 12, Township 44 South, Range 32 East; thence, easterly along the North line of Section 7, Township 44 South, Range 33 East, to the center line of Flaghole Drainage District Levee, as it runs to the east near the northwest corner of said Section 7, Township 44 South, Range 33 East; thence, easterly along said center line of the Flaghole Drainage District Levee to where it meets the center line of South Florida Water Management District’s Levee 1 at Flag Hole Road; thence, continue easterly along said center line of said Levee 1 to where it turns south near the Northwest corner of Section 12, Township 44 South, Range 33 East; thence, Southerly along said center line of said Levee 1 to where the levee turns east near the Southwest corner of said Section 12; thence, easterly along said center line of said Levee 1 to where it turns south near the Northeast corner of Section 17, Township 44 South, Range 34 East; thence, southerly along said center line of said Levee 1 and the center line of South Florida Water Management District’s Levee 2 to the intersection with the north line of Section 33, Township 45 South, Range 34 East; thence, easterly along the north line of said Section 33 to the northeast corner of said Section 33; thence, southerly along the east line of said Section 33 to the southeast corner of said Section 33; thence, southerly along the east line of Section 4, Township 46 South, Range 34 East to the southeast corner of said Section 4; thence, westerly along the south line of said Section 4 to the intersection with the centerline of South Florida Water Management District’s Levee 2; thence, southerly along said Levee 2 centerline and South Florida Water Management District’s Levee 3 centerline to the POINT OF BEGINNING.

~~(b) Sections 21, 28, and 33, Township 46 South, Range 31 East, are not included within the boundary of the C-139 Basin.~~

(b)(e) If the district issues permits in accordance with all applicable rules allowing water from the “C-139 Annex” to flow into the drainage system for the C-139 Basin, the C-139 Annex shall be added to the C-139 Basin for all tax years thereafter, commencing with the next C-139 agricultural privilege tax roll certified after issuance of such permits. “C-139 Annex” means the following described property: that part of the S.E. ¼ of Section 32, Township 46 South, Range 34 East and that portion of Sections 5 and 6, Township 47 South, Range 34 East lying west of the L-3 Canal and South of the Deer Fence Canal; all of Sections 7, 17, 18, 19, 20, 28, 29, 30, 31, 32, 33, and 34, and that portion of Sections 8, 9, 16, 21, 22, 26, 27, 35, and 36 lying south and west of the L-3 Canal, in Township 47 South, Range 34 East; and all of Sections 2, 3, 4, 5, 6, 8, 9, 10, and 11 and that portion of Section 1 lying south and west of the L-3 Canal all in Township 48 South, Range 34 East.

(17) SHORT TITLE.—This section shall be known as the “Everglades Forever Act.”

Section 19. Notwithstanding section 2 of chapter 2003-12, Laws of Florida, section 3 of chapter 96-412, Laws of Florida, is reenacted to read:

Section 3. Notwithstanding s. 373.4592(16), to the contrary, Sections 21, 28, and 33, Township 46 South, Range 31 East shall not be included within the boundary of the C-139 Basin.

Section 20. Notwithstanding section 2 of chapter 2003-12, Laws of Florida, section 84 of chapter 96-321, Laws of Florida, is reenacted to read:

Section 84. Notwithstanding subsection (16) of section 373.4592, Florida Statutes, to the contrary, Sections 21, 28, and 33, Township 46 South, Range 31 East shall not be included within the boundary of the C-139 Basin.

(Redesignate subsequent sections.)

And the title is amended as follows:

On page 3, lines 25-30, delete those lines and insert: F.S., as amended; abrogating the amendments to that section by chapter 2003-12, Laws of Florida; reenacting s. 3, chapter 96-412, Laws of Florida; reenacting s. 3, chapter 96-412, Laws of Florida, and s. 84, chapter 96-321, Laws of Florida, to exclude certain lands from the C-139 Basin; reenacting s.

Senator Lawson moved the following amendment which was adopted:

Amendment 2 (554986)(with title amendment)—On page 42, between lines 28 and 29, insert:

Section 19. Paragraph (b) of subsection (3) of section 373.1502, Florida Statutes, is amended to read:

373.1502 Regulation of comprehensive plan project components.—

(3) REGULATION OF COMPREHENSIVE PLAN STRUCTURES AND FACILITIES.—

(b) The department shall issue a permit for a term of 5 years for the construction, operation, modification, or maintenance of a project component based on the criteria set forth in this section. If the department is the entity responsible for the construction, operation, modification, or maintenance of any individual project component, the district shall issue a permit for a term of 5 years based on the criteria set forth in this section. The permit application must provide reasonable assurances that:

1. The project component will achieve the design objectives set forth in the detailed design documents submitted as part of the application.

2. State water quality standards, *including water quality criteria and moderating provisions* will be met ~~to the maximum extent practicable~~. Under no circumstances shall the project component cause or contribute to violation of state water quality standards.

3. Discharges from the project component will not pose a serious danger to public health, safety, or welfare.

4. Any impacts to wetlands or threatened or endangered species resulting from implementation of the project component will be avoided, minimized, and mitigated, as appropriate.

(Redesignate subsequent sections.)

And the title is amended as follows:

On page 3, line 30, after the semicolon (;) insert: amending s. 373.1502, F.S.; providing for the regulation of comprehensive plan project components; revising requirements that permit applications provide assurances that state water quality standards will be met to the maximum extent practicable;

Senator Geller moved the following amendment which was adopted:

Amendment 3 (231590)—On page 16, line 24, and on page 26, line 9, after “county” insert: *having a population of 75,000 or fewer, or a county having a population of 100,000 or fewer that is contiguous to a county having a population of 75,000 or fewer,*

MOTION

On motion by Senator Lee, the rules were waived and time of recess was extended until completion of **CS for SB 54-A** and motions and announcements.

Senator Geller moved the following amendment which failed:

Amendment 4 (270068)—On page 37, line 19, after the period (.) insert: *To ensure broad public participation and foster better local, state, and federal government partnerships, the department and the South Florida Water Management District shall consider, by January 31, 2004, recommendations for revision of the Long-Term Plan submitted by the Water Resources Advisory Commission of the South Florida Water Management District and the South Florida Ecosystem Restoration Task Force and Working Group.*

Pursuant to Rule 4.19, **CS for SB 54-A** as amended was ordered engrossed and then placed on the calendar of Bills on Third Reading.

REPORTS OF COMMITTEES

The Committee on Rules and Calendar submits the following bills to be placed on the Special Order Calendar for Wednesday, May 21, 2003: **CS for SB 32-A**, **SB 40-A**, **CS for SB 42-A**, **SB 34-A**, **SB 50-A**, **CS for SB 44-A**, **SB 36-A**, **SB 38-A**, **CS for SB 46-A**

Respectfully submitted,
Tom Lee, Chair

The Committee on Banking and Insurance recommends the following pass: **SB 50-A**

The bill was placed on the calendar.

The Committee on Natural Resources recommends a committee substitute for the following: **SB 54-A**

The bill with committee substitute attached was placed on the calendar.

The Committee on Regulated Industries recommends a committee substitute for the following: **SB 44-A**

The bill with committee substitute attached was placed on the calendar.

INTRODUCTION AND REFERENCE OF BILLS

FIRST READING

By Senator Dockery—

SB 54-A—A bill to be entitled An act relating to environmental and conservation lands; amending s. 253.025, F.S.; revising requirements for

appraisals when acquiring state lands; amending s. 253.034, F.S.; providing conditions under which state-owned lands may be considered nonconservation lands; revising requirements for land management plans for conservation lands to be submitted to the Division of State Lands; providing that land use plans for nonconservation lands be submitted to the Division of State Lands at least every 10 years; revising requirements for the sale of surplus lands; authorizing the Division of State Lands to determine the sale price of surplus lands; providing the Board of Trustees of the Internal Improvement Trust Fund with the authority to adopt rules; directing the Division of State Lands to prepare a state inventory of all federal lands and all lands titled in the name of the state, a state agency, a water management district, or a local government; requiring the participation of counties in developing a county inventory; providing conditions under which certain lands may be made available for purchase under the state's land surplus process; creating s. 253.0341, F.S.; authorizing counties and local governments to submit requests to surplus state lands directly to the board of trustees; providing for an expedited surplus process; amending s. 253.042, F.S.; revising the circumstances under which the board of trustees may directly exchange state-owned lands; providing requirements for the exchange of donated conservation lands; providing requirements for the conveyance of donated nonconservation lands; providing requirements for the exchange of other state-owned lands; amending s. 253.7823, F.S.; revising requirements for the disposition of former barge canal surplus lands; amending s. 259.032, F.S.; revising requirements for updating land management plans; revising provisions allowing the use of reverted funds; requiring that state agencies prepare and submit to the Department of Revenue for certification application requests for payment in lieu of taxes from local governments; revising requirements for payment in lieu of taxes; amending s. 259.0322, F.S.; providing for the reinstitution of payments in lieu of taxes; amending s. 259.036, F.S.; requiring land management review teams to submit a 10-year land management plan update to the Acquisition and Restoration Council; amending s. 259.041, F.S.; clarifying certain requirements regarding the acquisition of state-owned lands; amending s. 373.089, F.S.; providing conditions under which lands titled in the name of a water management district may be made available for purchase through a surplus process; amending s. 373.139, F.S.; repealing obsolete requirements; revising requirements for appraisals when acquiring water management district lands; amending s. 373.59, F.S.; revising provisions requiring payments in lieu of taxes from funds deposited into the Water Management Lands Trust Fund; amending s. 373.5905, F.S.; revising provisions requiring reinstitution of payments in lieu of taxes; amending s. 260.016, F.S.; revising powers of the department in evaluating lands for acquisition of greenways and trails; requiring the exchange of lands between the Board of Trustees of the Internal Improvement Trust Fund and a local government under certain conditions; providing purposes for which exchanged lands may be used; requiring the exchange of lands between the Board of Trustees of the Internal Improvement Trust Fund and a private entity by July 1, 2003; repealing s. 253.84, F.S., relating to the acquisition of lands containing cattle-dipping vats; repealing s. 259.0345, F.S., relating to the Florida Forever Advisory Council; providing for construction of the act in pari materia with laws enacted during the Regular Session of the Legislature; providing effective dates.

—was referred to the Committee on Natural Resources.

COMMITTEE SUBSTITUTES

FIRST READING

By the Committee on Regulated Industries; and Senator Diaz de la Portilla—

CS for SB 44-A—A bill to be entitled An act relating to the Florida Clean Indoor Air Act; implementing s. 20, Art. X of the State Constitution; reenacting s. 386.201, F.S., relating to a short title; amending s. 386.202, F.S.; providing legislative intent and findings; amending s. 386.203, F.S.; providing definitions; amending s. 386.204, F.S.; prohibiting smoking in certain places; creating s. 386.2045, F.S.; establishing specific exceptions where smoking is permitted; amending s. 386.205, F.S.; providing for designated smoking rooms; providing certain exceptions; requiring state agencies to adopt rules; amending s. 386.206, F.S.; providing requirements for the posting of signs in rooms designated as smoking rooms; amending s. 386.207, F.S.; providing for enforcement of the act by the Department of Business and Professional Regulation and the Department of Health; providing penalties; providing for the use of moneys collected as fines under the act; amending s. 386.208, F.S.;

providing penalties; reenacting s. 386.209, F.S., relating to preemption by the state of the regulation of smoking; amending s. 386.211, F.S.; providing for announcements at certain facilities; amending s. 386.212, F.S.; prohibiting smoking near school property; creating s. 386.2125, F.S.; requiring the Department of Health and the Department of Business and Professional Regulation to adopt rules; providing for construction of the act in *pari materia* with laws enacted during the Regular Session of the Legislature; providing for severability; providing an effective date.

By the Committee on Natural Resources; and Senator Dockery—

CS for SB 54-A—A bill to be entitled An act relating to environmental and conservation lands; amending s. 253.025, F.S.; revising requirements for appraisals when acquiring state lands; amending s. 253.034, F.S.; providing conditions under which state-owned lands may be considered nonconservation lands; revising requirements for land management plans for conservation lands to be submitted to the Division of State Lands; providing that land use plans for nonconservation lands be submitted to the Division of State Lands at least every 10 years; revising requirements for the sale of surplus lands; authorizing the Division of State Lands to determine the sale price of surplus lands; providing the Board of Trustees of the Internal Improvement Trust Fund with the authority to adopt rules; directing the Division of State Lands to prepare a state inventory of all federal lands and all lands titled in the name of the state, a state agency, a water management district, or a local government; requiring the participation of counties in developing a county inventory; providing conditions under which certain lands may be made available for purchase under the state's land surplus process; creating s. 253.0341, F.S.; authorizing counties and local governments to submit requests to surplus state lands directly to the board of trustees; providing for an expedited surplus process; amending s. 253.042, F.S.; revising the circumstances under which the board of trustees may directly exchange state-owned lands; providing requirements for the exchange of donated conservation lands; providing requirements for the conveyance of donated nonconservation lands; providing requirements for the exchange of other state-owned lands; amending s. 253.7823, F.S.; revising requirements for the disposition of former barge canal surplus lands; amending s. 259.032, F.S.; revising requirements for updating land management plans; revising provisions allowing the use of reverted funds; requiring that state agencies prepare and submit to the Department of Revenue for certification application requests for payment in lieu of taxes from local governments; revising requirements for payment in lieu of taxes; amending s. 259.0322, F.S.; providing for the reinstitution of payments in lieu of taxes; amending s. 259.036, F.S.; requiring land management review teams to submit a 10-year land management plan update to the Acquisition and Restoration Council; amending s. 259.041, F.S.; clarifying certain requirements regarding the acquisition of state-owned lands; amending s. 373.089, F.S.; providing conditions under which lands titled in the name of a water management district may be made available for purchase through a surplus process; amending s. 373.139, F.S.; repealing obsolete requirements; revising requirements for appraisals when acquiring water management district lands; amending s. 373.59, F.S.; revising provisions requiring payments in lieu of taxes from funds deposited into the Water Management Lands Trust Fund; amending s. 373.5905, F.S.; revising provisions requiring reinstitution of payments in lieu of taxes; amending s. 260.016, F.S.; revising powers of the department in evaluating lands for acquisition of greenways and trails; requiring the exchange of lands between the Board of Trustees of the Internal Improvement Trust Fund and a local government under certain conditions; providing purposes for which exchanged lands may be used; requiring the exchange of lands between the Board of Trustees of the Internal Improvement Trust Fund and a private entity by July 1, 2003; repealing s. 253.84, F.S., relating to the acquisition of lands containing cattle-dipping vats; repealing s. 259.0345, F.S., relating to the Florida Forever Advisory Council; amending s. 373.4592, F.S., as amended by ch. 2003-12, Laws of Florida; amending the "Everglades Forever Act"; revising goals and mandates relating to the timing of implementing certain goals; placing time limits on certain provisions unless reauthorized by the Legislature; reenacting s. 201.15(1),(2)(a),(11), and (12), F.S.; providing for distribution of proceeds from excise taxes on documents to pay debt service on Everglades restoration bonds; reenacting s. 215.619, F.S.; authorizing the issuance of Everglades restoration bonds to finance or refinance the cost of acquisition and improvement of land, water areas, and related property interests and resources for the purpose of implementing the Comprehensive

Everglades Restoration Plan; providing procedures and limitations; providing for deposit of funds in the Save Our Everglades Trust Fund; reenacting ss. 373.470(4), (5), and (6) and 373.472(1), F.S.; authorizing the payment of debt service on Everglades restoration bonds from the Save Our Everglades Trust Fund; revising requirements for deposit of state and water management district funds into the Save Our Everglades Trust Fund; reenacting s. 6 of ch. 2002-261, Laws of Florida; providing legislative intent that the issuance of Everglades restoration bonds is in the best interest of the state; providing for construction of the act in *pari materia* with laws enacted during the Regular Session of the Legislature; providing effective dates.

MESSAGES FROM THE HOUSE OF REPRESENTATIVES

FIRST READING

Motion

On motion by Senator Villalobos, by the required constitutional two-thirds vote of the membership the following bill was admitted for introduction outside the purview of the Governor's call:

The Honorable James E. "Jim" King, Jr., President

I am directed to inform the Senate that the House of Representatives has passed by the required Constitutional two-thirds vote of the membership HB 143-A and requests the concurrence of the Senate.

John B. Phelps, Clerk

By Representative Kottkamp and others—

HB 143-A—A bill to be entitled An act relating to the Florida Civil Rights Act of 1992; providing that this act shall be known by the popular name the "Dr. Marvin Davies Florida Civil Rights Act"; creating s. 760.021, F.S.; authorizing the Attorney General to commence against a person or group perpetuating discriminatory practices; providing for damages, injunctive relief, and civil penalties; providing for venue; providing for a hearing to determine a *prima facie* case; providing for attorney's fees and costs; amending s. 16.57, F.S.; authorizing the Attorney General to investigate violations under ch. 760, F.S.; amending s. 760.02, F.S.; defining "public accommodations"; creating 760.08, F.S.; making unlawful discrimination or segregation in places of public accommodation; providing for construction of the act in *pari materia* with laws enacted during the 2003 Regular Session of the Legislature; providing an effective date.

—was referred to the Committee on Judiciary.

CORRECTION AND APPROVAL OF JOURNAL

The Journal of May 16 was corrected and approved.

CO-SPONSORS

Senators Aronberg—SB 48-A; Campbell—CS for SB 46-A; Villalobos—SB 34-A

VOTES RECORDED

Senator Wasserman Schultz was recorded as voting "yea" on the following bills which were considered May 16: **SB 2-A, SB 4-A, CS for SB 8-A, SB 10-A, SB 12-A, SB 14-A, CS for SB 18-A, SB 20-A, SB 22-A, SB 24-A, CS for SB 26-A, SB 28-A, SB 30-A and SR 52-A.**

Senator Wasserman Schultz was recorded as voting "nay" on the following bill which was considered May 16: **SB 16-A**

RECESS

On motion by Senator Lee, the Senate recessed at 7:15 p.m. for the purpose of holding committee meetings and conducting other Senate business to reconvene at 10:00 a.m., Tuesday, May 27 or upon call of the President.